Supreme Court, U.S.
FILED
JUL 1 2004
OFFICE OF THE CLERK

No. 04-19

In the Supreme Court of the United States

BRANDYWINE, INC. d/b/a EXPRESSWAY VIDEO, and GARY R. SEWELL,

Petitioners,

v.

CITY OF RICHMOND, KENTUCKY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This Court has clearly held that speakers attempting to assert their First Amendment rights need not comply with a potentially unconstitutional restriction of those rights in order to obtain federal question standing. *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). The decision of the Sixth Circuit below fundamentally altered this principle by mandating strict compliance with zoning regulations as a condition precedent to challenging the regulations in federal court. The first question presented is therefore whether an adult bookstore subject to unbridled government discretion to dictate its location need submit itself to that discretion before filing suit in federal court.

The second question presented concerns mootness. Pursuant to this Court's precedent, a lawsuit challenging the constitutionality of a city ordinance does not become moot when a city amends the unconstitutional ordinance after the party brings suit, as long as the city makes it absolutely clear that the unconstitutional ordinance will not be reenacted. *See Friends of the Earth v. Laidlaw Envir. Svcs.*, 528 U.S. 167, 189 (2000). The Sixth Circuit blanketly determined that amendments to a challenged zoning ordinance render the challenge moot. The question then becomes whether legislative amendments can moot an existing constitutional attack in light of the fact that absent a permanent injunction, there can be no assurance that the city will not reenact the unconstitutional ordinance because the city can not bind future councils.

PARTIES TO THE PROCEEDING

Petitioners are Brandywine, Inc. d/b/a Expressway Video, a Kentucky corporation, and Gary R. Sewell, the owner and president of Brandywine, Inc. Respondent is the City of Richmond, a municipality located within the Commonwealth of Kentucky.

Brandywine, Inc. d/b/a Expressway Video is not owned by any parent corporations, is not a publicly traded corporation, and is not owned in whole or in part by any publicly traded corporation.

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Richmond Ordinance No. 01-30 . . . . . *passim*

Brandywine, Inc. d/b/a Expressway Video and Gary R. Sewell respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 359 F.3d 830 (6th Cir. 2004). App., *infra*, 1a-15a. The opinion and order of the United States District Court for the Eastern District of Kentucky, Lexington is unreported. App., *infra*, 16a-47a.

JURISDICTION

The judgement of the United States Court of Appeals for the Sixth Circuit was filed on March 3, 2004. The mandate was issued on March 25, 2004. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides in pertinent part that "Congress shall make no law . . . abridging the freedom of speech." The pertinent provisions of the ordinances at issue, namely the Richmond Development Ordinance and Richmond Ordinance Nos. 01-12 and 01-30, are reprinted in full in the appendix to this petition. App., *infra*, 50a-153a.

STATEMENT

Zoning in Richmond, Kentucky is governed by a Development Ordinance that divides the city into five zoning

districts: agricultural, residential, business, industrial, and public/semi-public. App., *infra*, 97a. Within each zoning district, the Ordinance establishes three categories of permitted land use: principal/primary, conditional, and accessory. *Id.* at 90a-91a. Principal/primary uses are defined as uses "that are deemed to be most appropriate, and are permitted outright in a district without further review by the planning commission or the board of adjustment." *Id.* at 90a. Conditional uses are uses that:

> may or may not be appropriate in a district, dependent upon the situation. These uses may call for restrictions on location, size, extent, and character of performance in addition to those already imposed by the ordinance, and require review and permitting by the conditional use requiring review by the board of adjustments.

Id.

On or about April 3, 2001, Respondent, City of Richmond ("City"), enacted Ordinance No. 01-12, which required individuals seeking to open adult establishments to request and obtain a conditional use permit from the City Board of Adjustments prior to locating in areas that are zoned for industrial uses. App., *infra*, 50a. The Ordinance did not permit adult establishments to operate in any other zone in the city but the I-2 zone. Prior to the enactment of the Ordinance, the City did not define, categorize, or otherwise hold out as unlawful the operation of adult establishments within the city limits.

Petitioner Gary R. Sewell is the owner and president of Petitioner Brandywine, Inc. d/b/a Expressway Video

("Brandywine"), a Kentucky Corporation. App., *infra*, 18a. On June 25, 2001, Mr. Sewell, acting on behalf of Brandywine, applied for a license to do business in an area in the City that is located within a B-3 Highway Business District Zone. App., *infra*, 2a. In order to obtain a business license in a B-3 zone, Mr. Sewell was required to sign a written pledge foregoing his right to engage in protected First Amendment expressive activities. *Id.* It was only after he did so that the City issued Brandywine a license. *Id.*

Soon after receiving the business license, Petitioners opened an adult bookstore called Expressway Video in the B-3 zone. *Id.* at 20a. Because Petitioners' bookstore was operating in the B-3 zone, the City revoked its license and Petitioners were forced to close the store. *Id.*

On July 17, 2001, Petitioners brought suit in the United States District Court for the Eastern District of Kentucky challenging the constitutionality of the Richmond Development Ordinance and Ordinance No. 01-12, both facially and as applied to Petitioners. App., *infra*, 16a-17a. Among the claims raised by the Petitioners was the assertion that the Ordinance imposed a prior restraint on protected expression by failing to guarantee any location within the City upon which an adult business could operate of right. *Id.* Petitioners later amended their Complaint to attack the City's general business licensing scheme as it was being applied to restrict Petitioners' protected activities. *Id.*

Less than one month after Petitioners filed suit, Richmond amended Ordinance No. 01-12 with Ordinance No. 01-30, removing the conditional use classification and reclassifying adult bookstores as principal/primary uses in I-2 zones. App., *infra*, 53a. With this amendment, adult bookstores no longer

had to seek approval from the Board of Adjustments before locating in I-2 zones. *Id.*

The Ordinance, as it existed when Petitioners filed suit, is unconstitutional under the First Amendment because it conferred unbridled discretion to government officials to grant or deny a business license for adult businesses. The restriction of adult businesses to certain areas within a city is analyzed as a time, place, and manner restriction when the ordinance is aimed not at the content of the speech, but at its secondary effects. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). The inquiry then becomes, "whether the . . . ordinance is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication." *See id.* at 50.

Even if Ordinance No. 01-12 was found to be designed to serve a substantial governmental interest,[1] it does not allow for reasonable alternative avenues of communication. This is because in order to operate in the City of Richmond prior to the adoption of Ordinance No. 01-30, an adult business was required to seek the approval of government officials, who had full authority to determine whether the business met the ambiguous requirements of a conditional use.

This Court has long held that "an ordinance . . . which makes the peaceful enjoyment of freedoms which the Constitution guarantees contingent upon the uncontrolled will of an official – as by requiring a permit or license which may be granted or withheld in the discretion of the official – is an unconstitutional censorship or prior restraint upon the

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[1]Petitioners do not concede that Ordinance No. 01-12 is designed to serve a substantial governmental interest.

enjoyment of those freedoms." *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 226 (1990). "[Without express standards by which to measure an official's actions], *post hoc* rationalizations by the licensing official and the use of shifting or illegitimate criteria are far too easy, making it difficult for courts to determine in any particular case whether the licensor is permitting favorable, and suppressing unfavorable, expression." *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 757 (1988). "[T]wo major First Amendment risks associated with unbridled licensing schemes [are] self-censorship by speakers in order to avoid being denied a license to speak; and the difficulty of effectively detecting, reviewing, and correcting content-based censorship 'as applied' without standards by which to measure the licensor's action." *Id.* at 759. Under these principles, Ordinance No. 01-12 violates the First Amendment because it effectively denied Petitioners a reasonable opportunity to open and operate an adult theater within the City of Richmond. *See City of Renton*, 475 U.S. at 54.

The district court held a bench trial on December 4, 2001. App., *infra*, 17a. In an Opinion and Order filed on March 29, 2002, the district court dismissed Petitioner's action holding that the amended Ordinance No. 01-30 did not unconstitutionally restrict adult expression and the language was not vague or overbroad. *Id.* at 21a-30a. It further held that Petitioners lacked standing to challenge the constitutionality of Ordinance No. 01-12. *Id.* at 30a-39a. In its decision, the district court relied on *S & G News, Inc. v. City of Southgate*, 638 F.Supp. 1060 (E.D. Mich. 1986), aff'g without opinion 819 F.2d 1142 (6th Cir. 1987)(unpublished). *Id.* at 34a. The court reasoned that Petitioners were not "subject to" the conditional use requirement of Ordinance No. 01-12 because they did not attempt to locate or express a desire to locate the adult bookstore in an I-2 zone. *Id.* at 32a.

Accordingly, the court found that "[a]ny declaration by this Court that the conditional use permit was unconstitutional would merely serve as an advisory opinion . . . ." *Id.* In addition, the Court found that even if the conditional use provision were unconstitutional, it could be severed from the remainder of the Ordinance. *Id.* at 37a-39a. Alternatively, the court found that the amendment of the Ordinance after Petitioners brought suit rendered Petitioners' complaint moot. *Id.* at 40a-44a. The court reasoned that the amendment "abolishing the conditional use scheme is reliable assurance that the City will not resume a conditional use policy for adult-oriented businesses . . . ." *Id.* at 42a-43a.

In an opinion filed on March 3, 2004, the United States Court of Appeals for the Sixth Circuit affirmed the order of the district court. App., *infra*, 1a. Judge Cole filed a dissenting opinion. *Id.* at 10a. The majority held that the Petitioners did not have standing to challenge the constitutionality of Ordinance No. 01-12 because they never alleged any intention to locate their adult bookstore in an I-2 zone. *Id.* at 7a. The court further held that Petitioners' claim was moot because Ordinance No. 01-12 was amended by the City and the amendment "provides sufficient assurance that the April amendment will not be re-enacted." *Id.* at 9a.

* * * * * * * * * * * * * *

1. Petitioners have standing to attack Ordinance No. 01-12 because Petitioners' bookstore opened when the Ordinance was still in effect and the City forced the closure of the bookstore pursuant to that Ordinance.

The requirements for standing to challenge a legislative action pursuant to Article III of the United States Constitution are: (1) injury in fact, meaning an invasion of a legally-protected interest that is concrete, particularized, and actual or imminent; (2) a causal relationship between the injury and the challenged legislation or regulation, meaning that the injury can fairly be traced to the challenged action and not to conduct of a third party; and (3) a likelihood that the injury will be redressed by a favorable decision, meaning that the possibility of obtaining relief as a result of a favorable decision is not too speculative. *See Northeastern Fla. Chapter, Associated Gen. Contractors of Am. v. Jacksonville*, 508 U.S. 656, 663-64 (1993).

The Sixth Circuit incorrectly held that because Petitioners never alleged any intention to locate the bookstore in the I-2 zone, and instead chose to apply for a license in a B-3 zone, they lacked standing to challenge the provisions of the zoning scheme that do not relate to B-3 zones, including the application of the conditional use procedure to adult bookstores in I-2 zones.

This Court has traditionally relaxed standing requirements when the exercise of First Amendment rights is at stake. *See, e.g., Secretary of State of Md. v. Joseph H. Munson, Co.*, 467 U.S. 947, 956 (1984); *Broadrick v. Oklahoma*, 413 U.S. 601 (1973); *Thornhill v. Alabama*, 405 U.S. 438 (1940). Furthermore, this Court has held that *anyone* who is subject to an unconstitutional ordinance "may challenge it facially *without the necessity of first applying for, and being denied, a license.*" *Plain Dealer*, 486 U.S. at 756 (emphasis added).

Petitioners were "subject to" the unconstitutional ordinance because Expressway Video is an adult business. Ordinance No. 01-12 was unconstitutional because Petitioners

had no reasonable alternative avenue of communication. The Ordinance can not be severed because its constitutionality can only be determined by examining whether the entire Ordinance allows Petitioners a reasonable opportunity to open and operate an adult bookstore in the City. The restrictions in the I-2 zone effectively create a total city-wide ban on adult businesses, which is unconstitutional. In the Court of Appeals decision, the dissent pointed out that under Kentucky law, KRS § 446.090,[2] "a statute cannot simply shed its lone unconstitutional provision when – as is the case here – all of the statute's parts are inseparably connected." App., *infra*, 12a.

The Sixth Circuit erred in affirming the district court's holding that the conditional use provision concerning I-2 zones is severable from the remainder of the Ordinance. If the conditional use provision were stricken from the Ordinance, adult businesses would not magically become "principal/primary" uses, but rather would be left without the ability to locate anywhere within an I-2 zone or any other zone. This is why amended Ordinance No. 01-30 did not merely remove the conditional use provision, but rather changed the use designation to "principal/primary." App., *infra*, 56a. Given that a city may not place zoning restrictions on adult businesses that effectively render the businesses unable to exist, Ordinance No. 01-12 was patently unconstitutional and the unconstitutional provision could not be severed from the remainder of the Ordinance.

Prior to the enactment of the unconstitutional conditional use regulations found in Ordinance No. 01-12, adult

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[2]"Severability of a local ordinance is a question of state law . . . ." *Plain Dealer*, 486 U.S. at 772.

businesses were not defined or otherwise recognized as categorical land uses in the City. But for the enactment of the unconstitutional Ordinance, the prohibition against adult bookstores in B-3 zones, upon which the City relied to force Petitioners' store to close, would not exist. Petitioners are "subject to" Ordinance No. 01-12 because the B-3 prohibition, if such a prohibition exists at all, only arises as a result of the I-2 conditional use scheme. If the Ordinance were to be declared unconstitutional, Petitioners could be placed in the same position as before the Ordinance was enacted – they would be permitted to locate an adult bookstore in the B-3 zone. Thus, the practical effect of Ordinance No. 01-30 is that Petitioners' adult bookstore can remain open in the B-3 zone as a valid non-conforming use.

The Sixth Circuit spent much of its opinion discussing how Petitioners could not assert third party standing. Petitioners have not attempted to assert third party standing, but rather contend that they have standing because they are subject to unconstitutional Ordinance No. 01-12.

The Sixth Circuit has decided this important issue in a way that conflicts with relevant decisions of this Court. If the Sixth Circuit's decision is allowed to stand, other potential speakers will not be able to challenge an unconstitutional ordinance if they do not show the court that they attempted to comply with the unconstitutional regulation. This is in direct contradiction of this Court's decision in *Plain Dealer*. Furthermore, this Sixth Circuit precedent will cause courts who review city zoning ordinances in the future to evaluate the constitutionality of requirements in separate zones rather than evaluate the city's regulatory scheme in the aggregate.

2. While Ordinance No. 01-30 amended Ordinance No. 01-12 by removing the conditional use restriction and identifying

adult bookstores as "primary uses" in I-2 zones, the amendment does not render Petitioners' challenge moot. The Sixth Circuit's finding that Petitioners' claims are moot conflicts with this Court's previous decisions on the issue.

"It is well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" *Friends of the Earth v. Laidlaw Envir. Svcs.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 (1982)). "[I]f it did, the court would be compelled to leave '[t]he defendant . . . free to return to his old ways.'" *Friends of the Earth*, 528 U.S. at 189 (quoting *City of Mesquite*, 455 U.S. 289, n.10). A justification for finding that a case has not become moot is when the unconstitutional law is "capable of repetition, yet evading review." *Roe v. Wade*, 410 U.S. 113, 125 (1973). In accordance with these principles, this Court has noted that "the standard we have announced for determining whether a case has been mooted by the defendant's voluntary conduct is stringent: 'A case might become moot if subsequent events made it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur.'" *Friends of the Earth*, 528 U.S. at 189 (quoting *United States v. Concentrated Phosphate Export Assn.*, 393 U.S. 199 (1968)). The burden of persuading the court that the wrongful behavior could not reasonably be expected to recur "lies with the party asserting the mootness." *Id.*

Rather than requiring the City to make "absolutely clear" that it will not reenact the unconstitutional Ordinance, the Sixth Circuit placed the burden on Petitioners to show that the City could reasonably be expected to reenact the unconstitutional Ordinance. The Sixth Circuit incorrectly reasoned that because the City never threatened to reenact the

unconstitutional Ordinance, Petitioners' claim was properly dismissed by the district court as moot. However, the City never promised that it would not reenact the Ordinance. In fact, absent a permanent injunction, there can be no assurance that the city will not reenact the unconstitutional ordinance because the city can not bind future councils. As noted by the dissent, "the record demonstrates how readily and easily the City can amend the Ordinance: it did so twice in the five-month period between April 2001 and August 2001." App., *infra*, 13a.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because the United States Court of Appeals for the Sixth Circuit decided two important federal questions on standing and mootness in a way that conflicts with relevant decisions of this Court. This conflict threatens to imperil the speech of not only adult businesses, but more purely political and educational speakers, by requiring them to undergo a loss of First Amendment rights as a condition precedent to challenging the governmental action that lead to that loss.

This Court should grant a writ of certiorari to reassert the scope of the relaxed standing requirements in First Amendment cases. This Court has previously held that "when there is a danger of chilling free speech, the concern that constitutional adjudication be avoided whenever possible may be outweighed by society's interest in having the statute challenged." *Secretary of State of Md. v. Joseph H. Munson, Co.*, 467 U.S. 947 (1984). Consistent with this precedent, it is important from a constitutional perspective that speakers be able to challenge the unconstitutional regulations prior to suffering a loss of First Amendment freedoms.

The Sixth Circuit set a dangerous precedent that courts should engage in a piecemeal examination of the constitutionality of zoning ordinances rather than evaluate a city's regulatory scheme in the aggregate. The First Amendment requires an adequate opportunity for adult businesses to operate in a given city, not in any particular zone. If the Sixth Circuit's decision is allowed to stand, other potential speakers will not be able to challenge an unconstitutional ordinance if they do not show the court that they attempted to comply with the unconstitutional restrictions by location in a particular zone. Such precedent will limit potential speakers' attempts to challenge these regulations and will chill permitted speech. This is in direct contradiction of this Court's decision in *Plain Dealer*, 486 U.S. at 756, wherein this Court held that anyone subject to an unconstitutional ordinance may challenge it facially without first having to comply.

The Sixth Circuit's decision is also in direct contradiction to this Court's precedent concerning whether a lawsuit challenging the constitutionality of a city ordinance becomes moot if a city amends the challenged ordinance after the lawsuit is filed. This Court has held that a case only becomes moot if subsequent events make it absolutely clear that the allegedly wrongful behavior could not reasonably recur. *Friends of the Earth*, 528 U.S. at 189. The Sixth Circuit's holding that the fact that the Ordinance was amended is sufficient assurance that the unconstitutional ordinance will not be reenacted shifts the burden to the challenger to show that the unconstitutional ordinance could be reenacted. *Friends of the Earth*, however, places the burden on the city to make it absolutely clear that it will not reenact the unconstitutional ordinance. Absent a permanent injunction, there can be no assurance that the city will not reenact the unconstitutional ordinance because the city can not bind future

councils. As stated by the dissent, this Sixth Circuit precedent "risks producing a cycle of amendment, mootness, and reamendment – the very cycle that mootness doctrine prohibits." App., *infra*, 14a.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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July 1, 2004

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 02-5507

[Filed March 3, 2004]

BRANDYWINE, INC. d/b/a EXPRESSWAY VIDEO and GARY R. SEWELL, Plaintiffs-Appellants,	)
v.	)
CITY OF RICHMOND, KENTUCKY, Defendant-Appellee.	)

Appeal from the United States District Court
for the Eastern District of Kentucky at Lexington
No. 01-00283
Karl S. Forester, Chief District Judge

Before: NORRIS, BATCHELDER, and COLE, Circuit Judges.

OPINION

ALAN E. NORRIS, Circuit Judge. Plaintiffs Brandywine, Inc. and Gary R. Sewell appeal from the district court's dismissal of their constitutional challenge to the city of Richmond's zoning scheme. They maintain that the district court erred when it upheld Richmond's revocation of the business license to their adult bookstore. For the reasons given below, the order of the district court is affirmed.

I.

On June 25, 2001, plaintiff Gary R. Sewell, owner and president of Brandywine, Inc., applied for a business license in the city of Richmond, Kentucky. Sewell stated on his application that his business would engage in the "Rental, Sales & Exhibition of Video, Books, Magazines, etc." He signed a statement promising that "No Movies, Books, Magazines, Novelty item or any other item of an adult nature will not [sic] be sold, distributed or given away or traded at this location." City officials issued him a license. Despite his disclaimer, Sewell proceeded to open a retail store selling sexually explicit books and other materials.

On July 18, 2001, city officials notified plaintiffs by letter that their store was operating improperly under Richmond's zoning rules. The letter stated that the store was located in a B-3 business zoning district, and that businesses engaged in selling adult materials were only permitted to locate in I-2 industrial zones. The city revoked plaintiffs' business license and ordered that the store be closed.

Since the time that their business was closed, plaintiffs have expressed no interest in relocating. Nor have they

attempted to appeal their license revocation through the process provided by Richmond's zoning rules.

II.

Zoning in Richmond is governed by a Development Ordinance. The Ordinance divides Richmond into five zoning districts: agricultural, residential, business, industrial, and public/semi-public. Within each zoning district, the Ordinance establishes three categories of permitted land use: principal/primary, conditional, and accessory. Principal/primary uses are defined as uses "that are deemed to be most appropriate, and are permitted outright in a district without further review by the planning commission or the board of adjustment." Conditional uses are defined as "uses that may or may not be appropriate, dependent upon the situation. These uses may call for restrictions on location, size, extent, and character of performance in addition to those already imposed by the ordinance, and require review and permitting by [sic] the conditional use requiring review by the board of adjustments." The Ordinance gives the board of adjustments the power to "approve, modify or deny any application for a conditional use permit."

The Development Ordinance lists "bookstores" as principal/primary uses in B-3 zones, and provides that "if a specific use is not listed, the closest related use will serve as the appropriate use category as determined by the planning commission."

At the time that plaintiffs applied for their license, the Development Ordinance included an April 2001 amendment that categorized "Adult Bookstores" as conditional uses in I-2 zones. It was this amendment that city officials relied upon when they revoked plaintiffs' license.

Upon the revocation of their business license, plaintiffs brought this action for declaratory, injunctive and monetary relief. They alleged that Richmond's zoning scheme unconstitutionally restricted their ability to exercise their First Amendment rights. They claimed that the April amendment forced adult businesses to locate in I-2 zones, where, as conditional uses, the determination of whether they obtained licenses was subject to the unbridled discretion of the board of adjustments. They also alleged that the language of the April amendment was unconstitutionally vague and overbroad, and that Richmond's enforcement of the zoning scheme resulted in the unconstitutional taking of their property.

Less than one month later, in August 2001, Richmond modified the Development Ordinance, reclassifying adult bookstores as principal/primary uses in I-2 zones. With this change, adult bookstores would no longer have to seek approval from the board of adjustments before locating in I-2 zones.

Despite the August amendment, plaintiffs continued to pursue their lawsuit. On March 29, 2002, the district court held that the Development Ordinance did not unconstitutionally restrict adult expression, and that the language of the April amendment was neither vague nor overbroad. It further held that plaintiffs lacked standing to challenge the conditional use procedure applied to adult bookstores in I-2 zones, and alternatively, that the August amendment that classified adult bookstores as principal/primary uses in I-2 zones rendered plaintiffs' complaint about the conditional use procedure moot. Accordingly, the district court dismissed plaintiffs' action. This appeal followed.

III.

1. Failure to Assert a Ripe Takings Claim

Plaintiffs argue that at the time that their license was revoked, Richmond's zoning scheme was unconstitutional because the April amendment only permitted adult businesses to locate in I-2 zones subject to the unbridled discretion of city officials. They contend that Richmond should have subjected them to the Development Ordinance as it existed prior to the April amendment, when no mention was made in the Development Ordinance of adult bookstores, and "bookstores" were categorized as principal/primary uses in B-3 zones.

Though plaintiffs have asserted a takings claim, that claim is premature. We ascertain whether a takings claim is ripe or not *de novo*. *Bannum, Inc. v. City of Louisville*, 958 F.2d 1354, 1362 (6th Cir. 1992). A takings claim is not ripe until "the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue." *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186, 105 S. Ct. 3108, 87 L. Ed. 2d 126 (1985). Because plaintiffs never appealed the revocation of their license, the city never reached a final, definitive position regarding the application of the Development Ordinance to plaintiffs' business.

2. Standing

Plaintiffs appeal from the district court's determination that they lacked standing to challenge provisions of the zoning scheme that applied outside of B-3 zones because they had not demonstrated an intent to relocate. Plaintiffs argue that

standing requirements are relaxed in challenges premised on First Amendment violations, and accordingly, that they should have been permitted to assert third party standing to challenge the conditional use procedure applied to adult bookstores in I-2 zones. They do not appeal the denial of their claim that that part of the Development Ordinance was vague or overbroad.

This court reviews *de novo* the district court's conclusions of law with regard to standing. *United States v. Miami University*, 294 F.3d 797, 806 (6th Cir. 2002). Where the district court has dismissed for lack of standing, we "accept as true all material allegations in the complaint, and construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

Under traditional requirements for standing, plaintiffs must establish (1) injury in fact, meaning an invasion of a legally protected interest; (2) a causal relationship between the injury and the challenged conduct; and (3) a likelihood that the injury will be redressed by a favorable decision. *G & V Lounge, Inc. v. Michigan Liquor Control Comm'n*, 23 F.3d 1071, 1074 (6th Cir. 1994). The district court correctly held that under these requirements, plaintiffs have standing to challenge the zoning scheme's ban on adult bookstores in B-3 zones, since they were injured in fact when they were forced to close their business, a causal relationship existed between the enforcement of the zoning scheme and the harm, and the injury was redressable by an award of monetary damages for lost business.

However, "a plaintiff may have standing to challenge some provisions of a law, but not others." *Clark v. City of Lakewood*, 259 F.3d 996, 1006 (9th Cir. 2001). In the instant

case, plaintiffs never alleged any intention to locate outside a B-3 zone. Therefore, under the traditional requirements, they lack standing to challenge the provisions of the zoning scheme that do not relate to B-3 zones, including the application of the conditional use procedure to adult bookstores in I-2 zones.

Plaintiffs argue that they should be permitted to assert third party standing to challenge the conditional use procedure because they are mounting a First Amendment facial challenge to Richmond's zoning scheme. Where plaintiffs challenge a statute or ordinance for vagueness or overbreadth, the Supreme Court has concluded that they have standing to assert the rights of third parties whose protected speech may have been impermissibly curtailed by the challenged prohibition, even though as applied to the plaintiffs themselves, the ordinances only curtailed unprotected expression. *Young v. American Mini Theatres, Inc.*, 427 U.S. 50, 59 n.17, 96 S. Ct. 2440, 49 L. Ed. 2d 310 (1976).

In *FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 110 S. Ct. 596, 107 L. Ed. 2d 603 (1990), the Supreme Court concluded that the plaintiffs lacked standing to challenge "civil disability provisions" that barred individuals who had committed certain crimes or people residing with those individuals from obtaining business licenses, where none of the plaintiffs had committed the listed crimes or resided with someone who had. *FW/PBS*, 493 U.S. at 230-36 (plurality opinion). In *East Brooks Books, Inc. v. City of Memphis*, 48 F.3d 220 (6th Cir. 1995), this court concluded that the plaintiffs lacked standing to challenge certain "disabling factors" that prevented them from obtaining business licenses, such as the failure to pay fees and the commission of certain crimes, because none of those "disabling factors" applied to them. *East Brooks Books*, 48 F.3d at 227-28. These cases indicate that plaintiffs may not assert third party standing in

every First Amendment facial challenge; rather plaintiffs may only do so in vagueness and overbreadth challenges. Accordingly, plaintiffs lack standing to challenge any provision of Richmond's zoning scheme inapplicable to B-3 zones.

3. Mootness

Plaintiffs appeal from the district court's conclusion that their claims were moot. We agree with the district court that although plaintiffs had standing to challenge those provisions of the zoning scheme that applied to B-3 zones, their claims for injunctive and declaratory relief were rendered moot by Richmond's enactment of the August amendment, which classified adult bookstores as principal/primary uses in I-2 zones. That amendment permitted adult bookstores to locate in I-2 zones without having to obtain permission from the board of adjustments. Plaintiffs do not challenge the constitutionality of the August amendment.

We review the district court's conclusions of law with regard to mootness *de novo*. *Cleveland Branch, N.A.A.C.P. v. City of Parma*, 263 F.3d 513, 530 (6th Cir. 2001). Claims become moot "when the issues presented are no longer 'live' or parties lack a legally cognizable interest in the outcome." *County of Los Angeles v. Davis*, 440 U.S. 625, 631, 99 S. Ct. 1379, 59 L. Ed. 2d 642 (1975) (quoting *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944, 23 L. Ed. 2d 491 (1969)). Plaintiffs ask this court to declare unconstitutional the zoning scheme as it existed when their license was revoked and to enjoin Richmond from enforcing that scheme. We can neither declare unconstitutional nor enjoin the enforcement of a provision that is no longer in effect.

Plaintiffs' reliance on *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 102 S. Ct. 1070, 71 L. Ed. 2d 152 (1982), is misplaced. Plaintiffs cite *Aladdin's Castle* for the proposition that the repeal of allegedly unconstitutional legislation does not render moot a claim for injunctive relief from its enforcement. Critical to the holding in that case, however, was the fact that legislators had publicly expressed an intention to re-enact the offending legislation. No such threat was made in this case, so the passage of the August amendment to the Development Ordinance provides sufficient assurance that the April amendment will not be re-enacted. *See Kentucky Right to Life, Inc. v. Terry*, 108 F.3d 637, 645 (6th Cir. 1997). Therefore, plaintiffs' claims for declaratory and injunctive relief were properly dismissed as moot.

4. Failure to State a Valid Claim for Monetary Damages

Plaintiffs' claim for monetary damages, however, was not properly dismissed as moot, because an award of monetary damages would compensate plaintiffs for the loss of the opportunity to engage in protected expression caused by the enforcement of the zoning scheme.

Though not moot, plaintiffs' claim for monetary damages must be dismissed for failure to state a claim upon which relief can be granted. The Constitution permits a city to require all sexually-oriented businesses to be located in a particular area within that city. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986). However, a city cannot legislate adult-oriented businesses out of existence. The First Amendment requires a city to provide a reasonable opportunity for adult speech somewhere within its borders. *Id.*

A claim alleging that a municipal zoning ordinance unconstitutionally restricts adult businesses would have to state that the zoning ordinance provided no reasonable opportunity for adult businesses to operate anywhere within the city. Stripped of those claims over which the district court lacked subject matter jurisdiction, plaintiffs' complaint only alleges that Richmond's zoning scheme, as modified by the April amendment, unconstitutionally restricted their right to operate in B-3 zones. Plaintiffs cannot assert a valid claim to the effect that the scheme provided them with no reasonable opportunity to locate anywhere in Richmond.

IV.

For the foregoing reasons, the district court's decision is **affirmed.**

DISSENT

R. GUY COLE, JR., Circuit Judge, dissenting. When this lawsuit commenced, adult businesses could be prohibited–per se or at the whim of local regulators–in the entire City. As a would-be proprietor of an adult business in the City, Brandywine is a proper party to challenge this scheme, and the suit survives the City's subsequent optional and reversible amendment of the Ordinance. Because Article III permits our review of Brandywine's claims, and because these claims establish that the challenged Ordinance violates the First Amendment, I respectfully dissent.

A. Standing

In holding that Brandywine lacks standing, the majority artificially slices Brandywine's challenge into component parts–separating its challenge to the Ordinance as a whole into

discrete challenges to the respective regulations governing zones B-3 and I-2. But we must evaluate the city's regulatory scheme in the aggregate: the First Amendment requires an adequate opportunity for adult businesses to operate in a given city, not in any particular zone. A total ban in either zone would be perfectly legal so long as the other provided sufficient space for adult businesses. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 106 S. Ct. 925, 89 L. Ed. 2d 29 (1986). Moreover, that a total ban in one zone is constitutional in some circumstances does not mean that it would be constitutional alongside a total ban or other undue restrictions in all other zones. *See, e.g.*, *Schad v. Borough of Mount Ephraim*, 452 U.S. 61, 75-76, 101 S. Ct. 2176, 68 L. Ed. 2d 671 (1981); *Christy v. City of Ann Arbor*, 824 F.2d 489, 492 (6th Cir. 1987). Brandywine argues--consistent with the First Amendment's approach to the regulation of adult businesses--that given zone I-2's restrictions, the restrictions on zone B-3 are unconstitutional. We can evaluate one zone without the other no more than we can measure night without day.

Moreover, the district court's holding that this suit could not redress Brandywine's injury, a conclusion that the majority implicitly ratifies, rests on a misreading of the Ordinance. The district court determined, as the City argued, that were we to determine that the Ordinance provides insufficient space for adult businesses, we would automatically nullify the restrictions on adult businesses operating in zone I-2, allowing adult businesses full access to that zone and leaving all other zones' restrictions unscathed. The Ordinance provides no such directions. It does provide that "should any section or provisions of the regulations be, for any reason, held void or invalid, it shall not affect any other section or provision thereof which is not itself void or invalid." Thus, if Brandywine's challenge could be separated

into component parts, we could save the Ordinance by jettisoning only the offending part. But under Kentucky law, which governs whether we may sever a problem provision from its neighbors, *see City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 772, 108 S. Ct. 2138, 100 L. Ed. 2d 771 (1988), a statute cannot simply shed its lone unconstitutional provision when--as is the case here--all of the statute's parts are inseparably connected. *See* KRS § 446.090. As I explained above, the First Amendment doctrine governing this challenge demands that we view the Ordinance in the aggregate. If the Ordinance provides inadequate space for adult businesses, we must invalidate the whole thing.

Brandywine's challenge, including its requests for both monetary and injunctive relief, necessarily engulfs the entire Ordinance. Brandywine's lack of connection with zone I-2–the supposed gap in its standing–is a red herring.

B. Mootness

The majority's alternative basis for affirming the dismissal of Brandywine's request for injunctive relief–that the action is moot--flatly contradicts the Supreme Court and our own precedent. Because the City amended the Ordinance (less than a month) *after* Brandywine filed suit, the City retains the burden of showing that its amendments moot this challenge. In *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 120 S. Ct. 693, 145 L. Ed. 2d 610 (2000), the Supreme Court reaffirmed that "a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is *absolutely clear* the allegedly wrongful behavior could not reasonably be expected to occur." *Id.* at 190 (emphasis added). The possibility looms that the City will reenact the prior version of the Ordinance once this case is dismissed, and the City has offered no

indication that its most recent amendment is permanent. And unlike a state or federal legislature, which must massage the esoteric desires of scores of representatives in two houses, a city council can enact new measures with relative ease. Indeed, the record demonstrates how readily and easily the City can amend the Ordinance: it did so twice in the five-month period between April 2001 and August 2001.

Yet the majority inverts the burden. According to the majority, today's case is moot because City officials have not vowed to restore the offending provisions following dismissal. But Brandywine does not have to show that the challenged conduct will occur again; the City must make it "absolutely clear" that it will not. Thus, in *Akers v. McGinnis*, 352 F.3d 1030, 1035 (6th Cir. 2003), we considered a challenge to certain regulations promulgated by the Michigan Department of Corrections (MDOC), even though these regulations had since been repealed. In rejecting the defendant's contention that its voluntary repeal mooted the case, we noted that "as the promulgation of work rules appears to be solely within the discretion of the MDOC, there is no guarantee that MDOC will not change back to its older, stricter Rule as soon as this action terminates." *Id.* at 1035. And in *Rosales-Garcia v. Holland*, 322 F.3d 386 (6th Cir. 2003) (en banc), *cert denied*, *Snyder v. Rosales-Garcia*, 123 S. Ct. 2607, 156 L. Ed. 2d 627 (2003), we rejected the government's assertion that an immigrant's challenge to her detention was mooted by her parole, because the INS had the discretion to return her to custody and the government had "made no . . . promise [that her parole would continue uninterrupted]." *Id.* at 397.

At no point has the City promised that the offending scheme is gone for good. Short of such an assurance, it cannot meet its burden under *Friends of the Earth*. The majority's refusal to hold the City to its burden is at odds with

both Supreme Court and Sixth Circuit precedent. And it risks producing a cycle of amendment, mootness, and reamendment–the very cycle that mootness doctrine prohibits.

C. First Amendment

Because Article III allows us to consider Brandywine's First Amendment challenges to the Ordinance, as it existed when Brandywine filed its complaint, we apply the familiar standards espoused by the Supreme Court. A total ban on adult business receives strict scrutiny; the restriction of such businesses to certain areas, however, we analyze as a time, place, and manner regulation. *Renton*, 475 U.S. at 46. Although the City prohibits adult businesses in zone B-3, it permits them in zone I-2. Moreover, a time, place, and manner restriction must be justified without reference to the content of the speech. Here, the ordinance is aimed not at the content of adult businesses *per se*, but "rather at the *secondary effects* of such theaters on the surrounding community." *Id.* at 47 (emphasis in original).

We therefore reach the case's crux: "whether the [Ordinance] is designed to serve a substantial governmental interest and allows for reasonable alternative avenues of communication." *Id.* at 50. Assuming, for the sake of argument, that the City's interest is substantial, the Ordinance provides for inadequate alternative spaces for adult businesses to operate. Even in zone I-2, the one place in which the City purports to allow adult businesses, they would have to meet the requirements of a "conditional use." The Ordinance defines a conditional use as one:

> which is essential to or would promote the public health, safety, or welfare in one or more zones, but which would impair the integrity and character of the

> zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent and character of the performance are imposed in addition to those imposed in the zoning regulation.

When considered in conjunction with the entire Ordinance, the amorphous criteria that an adult business must satisfy hardly provide a guarantee that adequate alternative avenues exist. *Cf. Plain Dealer Publ'g Co.*, 486 U.S. at 769-70 (invalidating restrictions on adult businesses that vest too much discretion to the government licensors). The First Amendment requires that the City "refrain from effectively denying [its citizens] a reasonable opportunity to open and operate an adult theater within the city." *Renton*, 475 U.S. at 54. Under the Ordinance, any adult business that the City deems inconsistent with "the integrity and character of the zone" would find itself without any location in the City in which to operate–a result that the First Amendment prohibits.

Because I conclude that Brandywine has standing to challenge the Ordinance, that its challenge is not moot, and that the Ordinance violates the First Amendment, I would reverse the judgment of the district court and remand for the issuance of an injunction and the computation of Brandywine's damages. I respectfully dissent.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 01-283- KSF

[Filed March 29, 2002]

BRANDYWINE, INC. d/b/a	)
EXPRESSWAY VIDEO and	)
GARY R. SEW ELL	)
PLAINTIFFS	)
	)
v.	)
	)
CITY OF RICHMOND, KENTUCKY	)
DEFENDANT	)
	)

OPINION & ORDER

I. INTRODUCTION

In this action, the plaintiffs seek declaratory and injunctive relief, as well as money damages against the defendant, alleging, *inter alia,* that the defendant's ordinances classifying "adult businesses" in the zoning classification of Heavy Industrial District (I-2) "illegally affects the First Amendment rights of the plaintiffs." *See* Plaintiffs' Complaint, p. 4, ¶8.

The plaintiffs allege that the zoning classification "fails to offer any definition of what is meant by the six categories of "adult businesses" and "[t]he ability to grant or deny a conditional use permit is within the sole discretion of the Board." *Id.*, p. 5 ¶8.

Specifically, Count One alleges that the said ordinances are unconstitutional facially and as applied in that they are a prior restraint. *Id.*, p. 6. Count Two alleges that the ordinances are unconstitutionally vague. *Id.*, p.7. Count Three maintains that the ordinances are unconstitutionally overbroad. *Id.*, p.8. Count Four argues that the ordinances violate portions of the Kentucky Constitution. *Id.* Count Five avers that the Ordinances fail to pass the "O'Brien test" [sic] in that they are not content neutral under a time, place and manner analysis, nor the least restrictive means by which to achieve the government interest. *Id.*, p.9. Finally, Count Six argues that the City made no findings that its treatment of adult businesses "is necessary to combat the harmful secondary effects of adult entertainment" [sic]. *Id.*, p. 10.

The plaintiffs filed an amended complaint alleging an additional count averring that the policies of the City pertaining to the issuance or denial of business licenses to persons seeking to open adult businesses are unconstitutional as applied to the plaintiffs. *See* plaintiffs' first amended complaint, p. 1, 2.

A bench trial was held in this matter on December 4, 2001. The Court heard evidence and argument from both parties surrounding the factual and legal allegations set forth in the plaintiffs' complaint for declaratory and injunctive relief, as well as in the defendant's answer. Pursuant to the Court's order, the plaintiffs filed a post-trial brief on December 18, 2001. The defendant filed a post trial brief on

January 8, 2002. The plaintiffs file da reply brief on January 29, 2002. Pursuant to an agreed order, the parties filed proposed findings of fact and conclusions of law on February 26, 2002.

II. FINDINGS OF FACT

Plaintiff Brandywine, Inc. d/b/a Expressway Video [hereinafter "Brandywine" or "plaintiffs"] is a Kentucky corporation authorized to do business within the Commonwealth of Kentucky, Plaintiff Gary Sewell [hereinafter "Sewell" or "plaintiffs"] is owner and president of Brandywine, Inc. Defendant City of Richmond, Kentucky hereinafter "the City" or "Richmond"] is a municipal corporation located within the Commonwealth of Kentucky.

Land use and development in Richmond is governed by the Development Ordinance of the City [hereinafter, "Development Ordinance"]. The Development Ordinance was last recodified and issued in combined form in October 1997 and has been amended in various ways since 1997. The Development Ordinance includes five zoning districts: agricultural, residential, business, industrial, and public/semi-public. These five areas of zoning districts are then further divided. For example, there are four residential zoning districts for various types of residential development. The Development Ordinance further sets forth permitted uses in each zoning district, including: principal/primary, conditional, and accessory uses. Bookstores are principal/primary uses in B-3 zones, as well as B-1 and B-2 zones. At the time the plaintiffs opened Expressway Video, for all industrial use zones bookstores are not listed as a permitted use wither as a principal/primary, conditional or accessory use. Adult bookstores at all times relevant to this action have been omitted from the list of permitted uses in all business zoning

districts. The omission of a use as either principal/primary, conditional or accessory in each zoning district's respective sections renders the use prohibited within that zoning district.

In April 2001, the city enacted two amendments to the Development Ordinance (namely, Ordinance 01-12) (hereinafter "amendment"). This amendment allowed "**adult** bookstores" to operate only in industrial zones (I-2 districts) and as conditional uses in such industrial zones. This amendment is properly construed as part of the Development Ordinance as a whole. Approximately 13% of the total land area in the City is located in I-2 zones. As a result of the April amendment, the Development Ordinance prohibits adult bookstores in B-3 zoning districts. The City restricted adult businesses to the industrial zone out of concern for the possible "secondary effects" of adult businesses such as an increase in crime, the potential negative impact on the City's other commercial establishments, and decreasing property values.

The parties stipulated at trial that the plaintiffs' business is an adult bookstore under the Development Ordinance as amended by Ordinance 01-12. Richmond requires all businesses, including bookstores and other retail stores displaying print material, to apply for and obtain a business license by way of a completed questionnaire submitted to the City's Director of Finance prior to beginning operations. This business licensing ordinance operates as a content-neutral occupational license tax enrollment process. On June 25, 2001, Plaintiff Gary Sewell acting on behalf of Brandywine applied for and was issued a license to do business within the City. Sewell indicated on a questionnaire that the nature of the business was "Rental, Sales, & Exhibition of Video, Books, Magazines, e[tc]" and stated that the business was to open on June 26, 2001. Sewell signed a statement at the

bottom of the questionnaire indicating that "no movies, books, magazines, novelty items or any other item of an adult nature will not [sic] be old, distributed or given away or traded at this location."

Michael Meers, and employee of Brandywine, testified at trial stating that during the last weed of June 2001, Brandywine opened a retail store known as "Expressway Video" which offered for sale to public videos, books, magazines and other visual materials of a sexually explicit nature. Expressway Video was located at 161 North Keeneland Drive, within a B-3 Highway Business District, according to David Evans, the Richmond City Manager. The plaintiffs erected or had constructed a sign advertising their business and holding out the business as selling "Adult Books an Videos." The sign said "Adult Books & Videos Mini Theater Peeps" and displayed two silhouettes of simulated nude women. Further the plaintiffs have acknowledged for th record that they are in fact an "adult bookstore" within the meaning of the Development Ordinance.

On July 18 2001, the business was in operations at North Keeneland Drive. On this date, Brandywine received a letter from Richard Bonetta, the City Director of Codes, and Mike Broyles, the Finance Director, indicating that Expressway Video was an adult bookstore operating within an improper zone. The letter stated that the business could not be located in a B-3 zone but was instead subject to the ordinance requiring operation of adult bookstores as conditional uses in I-2 zones. Based upon the terms of the ordinance, the City revoked Sewell's June 25, 2001 business license and ordered him to discontinue operating the store. Brandywine immediately ceased operations at the North Keeneland location and has not attempted to operate a similar adult-oriented store or any other store within the I-2 zone. Meers

indicated that the company intends to reopen the store if and when a threat of criminal prosecution for zoning violations is lifted. However, the plaintiffs have failed to offer any evidence to the Court that they own or lease property in any I-2 zone or have any intention to acquire property in order to open an adult business in the I-2 zone.

The Development Ordinance provides that any decision of city officials concerning the Department of Plannings and Codes may be appealed to the Board of Adjustment. The plaintiffs did not appeal the revocation of their business license pursuant to the procedures set forth in the Development Ordinance. Instead, the plaintiffs commenced this litigation on July 17, 2001. The City further amended the Development ordinance in August 2001 (hereinafter "August amendment"). This August amendment provides, *inter alia*, that adult establishments are a principal or primary use within I-2 zones and specifies the minimum distances from which one adult establishment may locate from another adult establishment. Previously, pursuant to the April amendments, adult bookstores were only a permitted (conditional) use in I-2 zones.

III.LEGAL ANALYSIS

A. The Constitutionality of the City concentrating adult bookstores in I-2 zones and prohibiting these stores in other zones

The plaintiffs' complaint alleges that zoning scheme is not a content neutral time, place, and manner restriction and that the city failed to make necessary findings regarding the harmful secondary effects associated with adult establishments. The plaintiffs have apparently conceded this claim by not presenting an argument relating to ths in their

post trial briefs. *See* Trial Transcript p. 4-5 ("[W]e are not here basically challenging the constitutionality of the amended ordinance, we're really here on other issues pertaining to the original ordinance and whether or not the plaintiff was or was not properly in business at that time."). The plaintiffs do not identify a single legal authority to argue that Richmond may not, as a matter of substantive law, completely ban adult bookstores from the B-3 zone. Regardless, the Court considers and rejects the plaintiffs' claim.[1]

Regulations enacted for the purpose of restraining speech on the basis of its content presumptively violate the First Amendment. *See, e.g., Carey v. Brown*, 447 U.S. 455, 462-63, n.7. (1980). However, it is well-settled that it is constitutional for a city to require all sexually-oriented businesses to be located in a particular area withing the city. *See City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 46 (1986); *Young v. American Mini Theatres, Inc.*, 427 U.S. 50 (1976).

In *City of Renton*, the court rejected a First Amendment challenge to a zoning ordinance that prohibited adult motion picture theaters from locating within 1000 feet of any residential zone, single or multi-family dwelling, church, park, or school. *See City of Renton*, 475 U.S. at 43. The law in *City of Renton* was clearly content based on its face in that it applied only to theaters that showed films with sexually explicit content. *Id.* At 47. However, the *City of Renton* court treated the law as content-neutral because the law was

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[1] Whether Richmond can (and, in fact, did) entirely prohibit adult bookstores in the B-3 zone is critical to the plaintiffs' later argument that without the presence of the conditional use scheme necessary to locate in an I-2 zone, the store would be an existing lawful nonconforming use in the B-3 zone.

motivated by a desire to control the secondary effects of adult movie theaters, such as crime, and not to restrict speech. *Id.* At 48. "[T]he Renton ordinance is completely consistent with our definition of 'content-neutral' speech regulations as those that 'are *justified* without reference to the content of the regulations speech.'" *Id.* At 48 (emphasis added). Content-neutral time, place and manner restrictions are constitutional "so long as they are designed to serve a substantial governmental interest and do not unreasonably limit alternative avenues of communication." *Id.* At 47.

Here, the Richmond ordinances do not purport to ban all adult bookstores or theaters from operating in the City. Instead, the ordinances merely limit the stores to the industrial zones. The plaintiffs even acknowledge that Richmond's designation of the adult establishments to the industrial zones "in an of itself may have no constitutional implications, depending on the amount of space available in the industrial zone." *Plaintiffs' motion for a temporary restraining order and preliminary injunction, p.5.*

Under the April amendments to the development ordinance, approximately 13.3% of the total area of Richmond is set aside for industrial zone use. *See* defendant's response to plaintiffs' motion for temporary restraining order and preliminary injunction, p. 10; trial transcript, p. 56. After the August enactment of distance limitations for adult businesses withing the I-2 zone, approximately 9.5% of the Richmond land is available for adult businesses. *See* trial transcript, p.55. *City of Renton* found that a city with only 5% of its area set aside for the "alternative avenues of communication" did not run afoul of the Constitution. *See Cit of Renton*, at 47. The plaintiffs have not argued that the land or location of the industrial zone was unreasonable or inappropriate for adult business locations. Instead, the

plaintiffs expressed no intention of locating in an industrial zone. *See* trial transcript, p. 36. Regardless, the economic feasibility or relocating to a particular site is not a First Amendment concern; nor is the fact that some development is needed before the land can accommodate an adult business. *Vincent v. Broward County, Florida,* 200 F.3d at 1325, 1335 (11th Cir. 2000). Clearly, the Richmond development plan does not unreasonably limit alternative avenues of communication.

Turning to the substantial governmental interest requirement for a valid time, place, and manner restriction, the Supreme Court acknowledges such an interest in zoning ordinances designed to "combat the undesirable secondary effects" of "business that purvey sexually explicit materials." *City of Renton*, 475 U.S. at 49 (citing *Young v. American Mini Theatres*, 427 U.S. 50 (1976)). The First Amendment does not require a city to conduct new studies or produce new evidence of the undesirable secondary effects of adult establishments before enacting a zoning ordinance. *See City of Renton*, 475 U.S. at 51-52. To be sure, *City of Renton* overturned the lower court holding that rejected the city ordinance because it was enacted without the benefit of studies specifically relating to "the particular problems or needs of Renton." *City of Renton*, 748 F.2d 527, 537 (9th Cir. 1984) *rev'd* 475 U.S. 41 (1986). Thus, Richmond did not have to conduct its own specific studies or analyses of secondary effects as long as the evidence relied upon is reasonably believed to be relevant to the problem the city faces. *City of Renton*, at 51-52.

The April amendments to the development ordinance did not specifically list in the preamble to that statute the "secondary effects studies" upon which the city relied. However, pursuant to Kentucky law, a city may regulate the

location of adult bookstores "to prevent crime, protect the city's retail trade, maintain property values and generally to protect and preserve the quality of [the city's] neighborhoods, commercial districts and the quality of urban life." K.R.S. 82.088 (Banks-Baldwin 2002). This Kentucky statute provides the authority for local governments to enact such zoning ordinances to curb specified secondary effects. To be sure, Kentucky zoning ordinances "are an exercise of the police power of the state, and no subdivision thereof may exercise that power except through a grant made by the people of the state through its legislative branch." *Hardin County v. Jost*, 897 S.W.2d 592, 594 (citing *Fowler v. Obier*, 7 S.W.2d 219, 223 (1928)).

The Court heard testimony from David Evans, Richmond City Manager, on why the amendments were enacted. *See Ranch House Inc. v. Amerson*, 238 f.2d 1273, 1280 (11th Cir. 2001) ("In determining whether the purpose of a law is to suppress protected speech, a court may examine a wide variety of materials, including the text of the statute, any preamble or express legislative findings associated with it, legislative history, and studies and information of which legislators were clearly aware."). Evans testified, without objection, to discussions among city officials concerning the negative effects of adult businesses on neighborhoods prior to the April amendment. In addition, Evans indicated that the purpose of passing the amendment was to comply with K.R.S. 82.088, to prevent an increase in crime in the B-3 zone, protect retail trade and maintain property values in this zone. *See* trial transcript p. 51-52. Evans also testified to a report he prepared and presented to the Commission concerning the negative secondary effects of adult businesses. *Id.* at 53-53. Based on the above testimony, the Court finds that Richmond reasonable relied on information concerning the negative secondary effects of sexually oriented businesses, and the

amendments to the Development Ordinance properly served a substantial government interest. Consequently, the City's act of prohibiting the plaintiffs' store from operating in a B-3 zone serves as a constitutional time, place and manner restriction.

B. The Richmond Development Ordinance, at all times relevant to this action, actually prohibited the plaintiffs' store from operating in a B-3 zone

As stated above, the plaintiffs did not provide any legal authority or argument indicating that the zoning decision to concentrate adult bookstores in I-2 zones is unconstitutional as a matter of substantive constitutional law. Without a constitutional basis to challenge the concentration of bookstores in I-2 zones, the plaintiffs set forth an argument of statutory construction. The plaintiffs argue that before the April amendments, the Development Ordinance allowed "bookstores" to operate in B-3 zones and the subsequent amendments do not alter this use. Further, the plaintiffs argue that the *only* effect of the April amendments is to specify that "***adult*** bookstores" were conditional uses in I-2 zones, but not otherwise prohibited from B-3 zones. In other works, "[p]laintiffs interpret the ordinance to supplement the city's existing zoning regulations, which clearly permit the operation of bookstores within B-3 zones, by also allowing adult bookstores as conditional uses in I-2 zones." *Plaintiff's reply to defendant's post trial memorandum*, p.5. In contrast, the defendant maintains that the development ordinance at all times since the April amendments prohibited the operation of adult bookstores within any zone other than I-2. *See* Defendant's post-trial brief, p.2. For the reasons stated below, the Court agrees with the defendant and finds that the Richmond Development Ordinance prohibits the operation of plaintiffs' adult business in any area other than an I-2 zone.

The above differing interpretations set forth by the parties of the general provisions of the Richmond Development ordinance allowing "bookstores" in the B-3 zone and the more specific provisions prohibiting "adult bookstores" in the I-2 zone present a purported conflict. The same rules governing the construction of statues apply to the construction of municipal ordinances. *See, e.g., City of Mayfield v. Reed*, 127 S.W. 2d 847, 849 (Ky. 1939). The plaintiffs argue, in a conclusory fashion without citation to authority, that the City's "lengthy discourse of statutory construction principles" are not relevant or applicable to resolving this case. *See* plaintiffs' reply to defendant's post-trial memorandum, p.8. However, this Court has a duty to interpret any purported conflict between statutes so as to harmonize the two. *See Ledford v. Faulkner*, 661 S.W.2d 475 (Ky. 1983).

An ordinance must be construed so that no part of it is meaningless or ineffectual. *See Combs v. Hubb Coal Co.*, 934 S.W.2d 250 (Ky. 1996). Pursuant to Kentucky law, specific provisions of a statute or ordinance control over general provisions. *See Commonwealth v. Phon*, 17 s.W.3d 106, 107 (Ky. 2000) (citation omitted) ("[w]hen there appears to be a conflict between two statutes...a general rule of statutory construction mandates that the specific provision take precedence over the general."); *Wells v. White*, 648 S.W.2d 77, 79 (Ky. 1983) ("the rule that a specific statute controls a more general one is firmly established in the law of the Commonwealth." (citation omitted). In addition, the general rule of construction for federal statutes, *expressio unis est exclusio alterius* ("to say the one is to exclude the other") applies with full force to the construction of Kentucky municipal ordinances. *See Palmer v. Commonwealth*, 3 S.W.3d 763, 764 (Ky. 1999) (citing *Louisville Water Co. v. Wells*, 664 S.W.2d 525 (Ky. 1984); *Wade v. Commonwealth*, 303 S.W.2d 905 (Ky. 1957)).

Applying these principles to the Richmond Development Ordinance and its amendments, Article IV of the Development Ordinance lists the permitted uses within each zoning district. Within each zoning district, several uses are identified as either principal or primary, conditional or accessory uses. The Development Ordinance specifically provides that the omission of a use as either principal/primary, conditional, or accessory in each zoning district's respective sections renders the would-be use prohibited. *See* permitted use charts continued within Development Ordinance for each zoning district, p. 31, 34-37 & 38-39. Further, the general notes for interpretation of the above referenced charts state that "uses not listed are not allowed." Development Ordinance, p.31. In the listed permitted uses for business zones under "uses allowed" adult bookstores are omitted. The April amendments to the Development Ordinance, 01-12, provides that adult bookstores are permitted as conditional uses in I-2 zones, while the August amendments, 01-30, list adult bookstores a principal or primary uses in I-2 zones. The remaining sections of the Development Ordinance do not list adult bookstores as either a principal/primary, conditional or accessory use. Consequently, pursuant to the Development Ordinance, the only zone in which any adult bookstore may operate is an I-2 zone. This result is dictated not only by the principle of *expressio unius est exclusio alterius*, but also by the express language of the Development Ordinance. *See* Development Ordinance, p.31 ("Uses not listed are not allowed."). The generic use "bookstore" is not listed as a use within an I-2 zone, and likewise the more specific use "adult bookstore" is not a listed use for a B-3 zone.

C. The constitutionality of the development ordinance *as applied* to the plaintiffs

At the time Gary Sewell applied for a business license, he specifically informed David Evans, Richmond City Manager, that he was "going to open an adult bookstore." *See* Trial Transcript, p.28. In response, Evans stated, "Mr. Sewell, you cannot open an adult bookstore in a B-3 zone, we have an ordinance that you can only have this in an I-2 zone." *Id.* In addition, at the time Sewell applied for a license to open the adult bookstore, he was told by Evans that he could operate a non-adult bookstore in a B-3 zone. *Id.* At 28-29. Sewell and Evans reached a clear understanding that pursuant to the Development Ordinance, an adult bookstore could not be operated in a B-3 zone. *Id.* at 56. In fact, Sewell signed a statement at the bottom of the business license application indicating that he would not sell anything of an adult nature at his establishment located in a B-3 zone. *Id.*

Now, the plaintiffs allege that the forced signing of this statement constitutes a course of conduct by the City functioning as an unlawful prior restraint. As explained in section one, *supra*, it is constitutionally permissible for the City to categorically prevent the adult-oriented business from operating in certain locations. As explained in section two, *supra*, by the terms of the April amendments to the Development Ordinance (Ordinance 01-12), the City in fact prohibited the plaintiffs' adult-oriented business from operating in a B-3 zone. Sewell was told by the City Manager that he could operate his adult-oriented business in an I-2 zone. *See* Trial Transcript p. 28. However, neither Sewell nor any other plaintiff indicated any intention to operate in an I-2 zone. *Id.* At 36. The plaintiffs were without a statutory or constitutional right to operate their adult-oriented business at the Keeneland Drive B-3 zone. Therefore, the signed statement or other actions by the City

do not constitute an unlawful prior restraint *as applied* to the plaintiffs.[2]

D. Plaintiffs' challenge to the Development Ordinances I-2 licensing requirements

Next, the plaintiffs argue that the April 01-12 Ordinance's required conditional use procedure for obtaining a license for an adult bookstore is facially unconstitutional as a prior restraint without necessary procedural safeguards. *See* plaintiffs' complaint, p.6-9, ¶ 9-20; plaintiffs' post-trial memorandum, p.4. The plaintiffs seek a declaration that Ordinance 01-12 is unconstitutional and further seek an injunction prohibiting its enforcement. *See* plaintiffs' post-trial memorandum, p,4. Specifically, the plaintiffs argue that Ordinance 01-12 fails to provide for a prompt decision as to whether a conditional use permit will issue and fails to provide for prompt judicial review in the event a conditional use application is denied. *Id.* At 6-9. In addition, the plaintiffs argue that the conditional use provisions places "unbridled discretion to suppress protected expression in the hands of government officials." *Id.* at 9-13.

1. Plaintiffs Lack Standing

The plaintiffs have the burden to establish standing. *Wirth v. Seldin*, 422 U.S. 490 (1975); *McNutt v. General Motors Acceptance Corp. Of Indiana, Inc.*, 298 U.S. 178 (1936). Article III Standing requires proof of an injury in fact, i.e., the actual or imminent invasion of a legally protected interest

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[2] In fact, the trial reveals that the plaintiffs obtained the business license to operate in a B-3 zone by fraud. The application of the doctrine of "unclean hands" to this fraudulent conduct is considered *infra* in note 8.

that is *personal* to the plaintiff, as well as concrete and particularized. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 n.1 (1992); *DLS, Inc. V. City of Chattanooga*, 107 F.3d 403, 413-14 (6th Cir. 1997). In addition, the plaintiff must show a causal relationship between the injury and the challenged legislation, i.e., the injury can be fairly traced to the challenged action and not to the conduct of a third party. *See, e.g., Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) (citations omitted). The plaintiff also must show the likelihood that the injury will be redressed by a favorable decision, meaning that the possibility of obtaining relief as the result of a favorable decision is not too speculative. *Id.*; *DLS*, 107 F.3d at 413-14.

The fact that a plaintiff must present an actual controversy to the Court is of course rooted in the Article III "case or controversy" requirement. *See, e.g., Valley Forge Christian College v. Americans United for Separation of Church and State Inc.*, 454 U.S. 464, 471 (1982). As stated by the Supreme Court,

> [t]he judicial power of the United States defined by Art. III is not an unconditioned authority to determine the constitutionality of legislative or executive acts. The power to declare the rights of individuals and to measure the authority of governments, this Court said 90 years ago, 'is legitimate only in the last resort, and as a necessity in the determination of real, earnest and vital controversy.'
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> *Valley Forge Christian College*, 454 U.S. at 471 (quoting *Chicago & Grand Trunk R. Co. v. Wellman*, 143 U.S. 339, 345 (1892)).

Here, the plaintiffs have failed to present a real, earnest and vital controversy in that a favorable decision would not result in actual relief and instead would merely serve as an advisory opinion. Expressway Video was located in a B-3 zone. As stated above, the plaintiffs do not have any constitutional or statutory right to operate their business in a B-3 zone. Pursuant to the April amendments to the Development Ordinance, 01-12, the special "conditional use" requirement challenged by the plaintiffs applied only to I-2 zones at the time plaintiffs applied for a business license.

At the time the plaintiffs applied for a business license, they never expressed any intention to open their business in an I-2 zone. *See* trial transcript, p.36. Further, the plaintiffs have not attempted to open any business in the I-2 zone subsequent to the closing of Expressway Video. In addition, the plaintiffs, throughout the pendency of this litigation, have not expressed any intent to open a sexually-oriented business in an I-2 zone. Thus, the conditional use provision for I-2 zones was and is wholly inapplicable to the plaintiffs' business located in a B-3 zone. Any declaration by this Court that the conditional use permit was unconstitutional would merely serve as an advisory opinion, because the plaintiffs did not attempt to open their store in the I-2 zone nor express any intent to open a store in an I-2 zone. Consequently, the plaintiffs are not *subject to* the conditional use requirement of 01-12, and are without standing because any alleged defect in the conditional use permit could not be redressed by a favorable decision. *Cf. Bronco's Entertainment, LTD v. Charter Township of Van Buren*, 2002 WL 193932 *2 (citing

City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750, 755-56 (6th Cor. 1988).[3]

The plaintiff's discussion of standing mistakenly focuses entirely upon their standing to challenge the closure of Expressway Video, located in a B-3 zone. Clearly, the plaintiffs have standing to challenge the closure of their B-3 zone business; however, the plaintiffs fail to understand that standing to challenge the conditional use permit that was limited to I-2 zone businesses involves a wholly separate analysis. To be sure, the plaintiffs omit discussion of the standing analysis required to attack the I-2 conditional permit requirement. *See* plaintiffs' proposed findings of fact and conclusions of law, p.7 (focusing entirely on the closure of Expressway Video and mistakenly concluding that a

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[3] In support of standing, the plaintiffs reply on *BJS No. 2 Inc. v. City of Troy, Ohio*, 87 F.Supp.2d 800, 807 (S.D. Ohio 1999), for the proposition that "[i]n the context of prior restraint licensing schemes, case law is clear that it is unnecessary for plaintiff to seek and obtain a permit under a facially invalid regulation prior to challenging that regulation in federal court." Plaintiffs' post trial brief, p.14. Even if the Court accepted plaintiffs' argument that Richmond's conditional use permit requirement constituted a prior restraint licensing scheme, *BJS* is inapposite because its finding of standing is premised on the plaintiff challenging the licensing scheme actually being *subject to* the licensing scheme. *See BJS*, 87 F.Supp.2d at 807 ("when a licensing statute allegedly vests unbridled discretion in a government official over whether to permit or deny expressive activity, *one who is subject to the law* may challenge it facially without the necessity of first applying for, and being denied, a license.") (quoting *City of Lakewood v. Plain Dealer Publishing Co.*, 486 U.S. 750, 755-756 (emphasis added). The plaintiffs, because of their B-3 location and clearly express lack of interest to locate in an I-2 zone, are not subject to the conditional use provisions for I-2 zones.

permanent injunction against enforcing Ordinance 01-12 would satisfy the redressability requirement for standing). In sum, the plaintiffs allege their injury is the City's decision to close Expressway Video. The plaintiffs further conclude that this injury would be redressed by the Court issuing an injunction against the City enforcing Ordinance 01-12. The Court cannot issue such an injunction because, as stated, the City's decision to close the plaintiffs' business based on its location in an improper zone was wholly constitutional. In fact, the allegedly unconstitutional conditional use provisions of Ordinance 01-12 have been amended and are no longer present for adult establishments. Consequently, this Court obviously may not enjoin from operation a particular Development Ordinance provisions that is no longer in effect.[4]

S & G News, Inc. v. City of Southgate, 638 F.Supp. 1060 (E.D. Mich. 186), is directly on point and dispositive to the standing issues presented in this case. *S & G News* involved, *inter alia*, a plaintiff adult bookstore owner suing for a permanent injunction to invalidate a city zoning provision that required a prospective owner/operator of an adult bookstore or adult motion picture theater to seek special approval from the City Planning Commission to operate such establishment in a "C-3" commercial district. *Id.* At 1062. Importantly, the *S & G News* parties stipulated that under no circumstances may an adult bookstore or adult motion picture theater locate in the city without the discretionary special approval of city administrative officials. *Id.* At 1064.

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[4] *See infra*, section D.2.(discussing the aspects of this case that are rendered moot b the August amendments to the Richmond Development Ordinance.

The *S & G News* plaintiff argued that the lack of specific guidelines and timeliness requirements in the "special approval" provision vested undue discretion in local officials. *Id.* At 1066. Despite the plaintiff's arguments that the special approval provision was unconstitutional, the Court held that the plaintiff was without standing to challenge this provision because it applied to C-3 districts and the plaintiff's business was located in a C-2 district. *Id.* The Court further stressed that the plaintiff had made no attempt to move to a C-3 district or to apply for a special approval use. *Id.* Since the *S & G News* plaintiff's adult-oriented business was not located in the zone subject to the special use provision, the Court found that the normally-strict standing requirements would not be relaxed as it sometimes is for First Amendment challenges. *Id.* The Supreme Court has stated that the normally-strict standing requirements should only be relaxed in cases where the plaintiff demonstrates that the statute's deterrent effect on legitimate expression is "both real and substantial" and that statute is no "readily subject to a narrowing construction by state courts." *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (quoted in *S & G News*, 638 F.Supp. at 1067).

Here, just as in *S & G News*, the plaintiffs' adult-oriented business is located in a zone that prohibits such a business, specifically a B-3 zone. The conditional use permit was applicable only to I-2 zones. As stated, the plaintiffs did not attempt to obtain a conditional use permit to locate in an I-2 zone. The plaintiffs did not attempt to purchase or lease property in an I-2 zone or otherwise express any intent to locate within the I-2 zone. In addition, the plaintiffs have not made any showing that the conditional use procedure within the I-2 zone has created, or may create, a real and substantial deterrent effect to them. *See S & G News*, 638 F.Supp. at 1067. Likewise, as in *S & G News*, any defects in the

conditional use procedure could be remedied by a narrowing construction in the state courts. *Id.*

The plaintiffs have submitted no evidence indicating that the conditional use requirement was applied differently to certain businesses out of an effort or guise to restrain or condition the content of speech so as to constitute a real and substantial deterrent. Instead, the conditional use requirement reveals that the particular location, size, extent, and character of performance may be conditioned by the board of adjustment. *See* plaintiff's exhibit A. Development Ordinance 401.1 (2) Conditional Uses. Consequently, the plaintiffs are without standing to challenge any potential constitutional defects in the conditional use procedure.[5] *See also Love Church v. City of Evanston*, 896 F.2d 1082 (7th Cir.

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[5] Since the plaintiffs are not subject to the conditional use permit and are thus without standing themselves, they are actually attempting to assert third-party standing to challenge the permit as it applied to those individuals *with* an interest in opening sexually-oriented businesses in an I-2 zone. Third party standing is a prudential limitation to standing, generally not permitted because it results in unnecessary and often ineffective adjudication of the rights of parties not before the court. *See, e.g., Singleton v. Wulff*, 428 U.S. 113-14. To assert third-party standing, a plaintiff must meet the requirements of Article III standing and meet three other requirements, namely, showings of an injury in fact, a close relationship with the third party, and a demonstrated hindrance to the third party's ability to protect his own interests. *See, e.g., Campbell v. Louisiana*, 523 U.S. 392 (1998); *Miller v. Albright*, 523 U.S. 420 (1998); *Powers v. Ohio*, 499 U.S. 400, 414 (1991). Here, even if the plaintiffs had met Article III standing, they have failed to identify any third party with an interest in opening a sexually-oriented business in an I-2 zone and any reason why such a third party cannot assert his own rights.

1990); *Civil Liberties for Urban Believers, et al. v. City of Chicago*, 1996 WL 89241 (N.D. Ill. 1996).

The plaintiffs make a cursory attempt to distinguish *S & G News*, by arguing that "[w]hile the court in the case [*S & G News*] did ultimately determine that the plaintiff did not have standing to bring suit against the City, that ruling was premised upon the fact that the plaintiff was not located within a proper zone *irrespective of the conditional use provision.*" *Plaintiffs' post trial brief, p. 14-15* (citing *S & G News,* 638 F.Supp. at 1066) (emphasis in original). While the *location* requirements of Ordinance 01-12 clearly apply to the plaintiffs as well as any Richmond business, only businesses attempting to locate in an I-2 zone are subject to the Ordinance 01-12 conditional use licensing provision. The fact that the plaintiffs would not be required to actually apply for a license in an I-2 zone and be denied such a license before being permitted to facially challenge the conditional use provision does not obviate the fact that the plaintiffs must actually have an *interest* in locating in an I-2 zone in order to have standing. *Cf. Plain Dealer Pub. Co.*, 486 U.S. at 756.

The plaintiffs improperly conflate the confidential use provision of Ordinance 01-12 with the ordinance's location requirement, discussed in section two, *supra*, specifying that adult bookstores may only locate within an I-2 zone. In fact, Ordinance 01-12 prohibits the plaintiffs from operating in an I-2 zone. In fact, Ordinance 01-12 prohibits plaintiffs from operating in an I-2 zone irrespective of the conditional use provision. The plaintiffs entirely ignore the clear severability provision contained within Ordinance 01-12, despite the fact that the case plaintiffs otherwise rely upon teaches that a city's intended location requirements as expressed in a zoning ordinance may operate by itself, apart from any unconstitutional conditional use provisions within that

ordinance. *See BJS*, 87 F.Supp.2d at 815-16. In addition, the Supreme Court has long held that severability provisions render a statute divisible. *See, e.g. Williams v. Standard Oil Co. of Louisiana*, 278 U.S. 235 (1929).

The Richmond Development Ordinance contains a severability provision indicating "[s]hould any section or provision of the regulations be, for any reason, held void or invalid, it shall not affect any other section or provision thereof which is not itself void or invalid." Development Ordinance, Section 206, p.4. Severability of a local ordinance is governed by state law. *See, e.g., Lakewood*, 486 U.S. at 772. The severability of Kentucky statutes and municipal ordinances is governed by K.R.S. § 446.090. *See Commonwealth v. Beasy*, 386 s.W.2d 444 (1965). When part of a statute is held unconstitutional, the remaining parts may operate alone, apart from the unconstitutional provisions. As provided by Kentucky law:

> [I]f any part of the statute be held unconstitutional the remaining parts shall remain in force, unless the statute provides otherwise, or unless the remaining parts are so essentially and inseparably connected with and dependent upon the unconstitutional part that it is apparent that the General Assembly would not have enacted the remaining part without the unconstitutional part, or unless the remaining parts, standing alone, are incomplete and incapable of being executed in accordance with the intent of the General Assembly.

KRS 446.090 (Banks-Baldwin, 2002)

To be sure, federal courts likewise strongly adhere to severability clauses. As stated by the Sixth Circuit, "[i]t is the duty of the courts to give effect to a severability clause

and to make an elision, so as not to invalidate an entire act." *Brown v. Alexander*, 718 F.2d 1417, 1428 (6th Cir. 1983) (citing *Moore v. Fowinkle*, 512 F.2d 629 (6th Cir. 1975); *Bright Lights, Inc. v. City of Newport*, 830 F.Supp. 378 (E.D.Ky. 1993).

Here, it is clear that the 01-12 ordinance's conditional use permit provision is not "so essentially and inseparably connected with "the ordinance's prohibition of adult bookstores from any other zone so as to indicate that the city would not have restricted adult bookstores from the B-3 zone without also placing a *conditional use* provision for such adult businesses in the I-2 zone. To the contrary, Richmond's intent, as identified in section one, *supra*, was to restrict the location of adult businesses from residential and business zones. The conditional use requirement for these businesses to operate in I-2 zones was not inseparable to the location restriction set forth in Ordinance 01-12, because of the severability provision and the fact that in August, 2002, the city amended its Development Ordinance by, *inter alia*, abolishing the conditional use provisions from the I-2 zone. Consequently, the location requirements of Ordinance 01-12 are separate, indeed severable, from the conditional use provisions of this ordinance and the plaintiff business was not located in the proper zone, "irrespective of the conditional use provision." The plaintiffs' attempt to distinguish *S & G News* is entirely without merit, and pursuant to the reasoning of *S& G News*, the plaintiffs are without standing to contest the conditional use provision.

2. Even if the plaintiffs had standing, their challenge to the conditional use requirement is moot due to an August amendment to the Development Ordinance removing the conditional use requirement from the Richmond Development Ordinance

When an actual case or controversy ceases to exist, federal courts must dismiss the case for want of subject matter jurisdiction. *See Aetna Life Ins. Co. Of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240-41 (1937); Burlington, 940 F.2d 1239, 244 (9th Cir. 1991). Mootness may be raised by the Court, *sua sponte*, at any stage of the proceedings. *See North Carolina v. Rice*, 404 U.S. 244, 246 (1971). "[F]ederal courts are without power to decide questions that cannot affect the rights of litigants in the case before them." *North Carolina v. Riles*, 404 U.S. 244, 246 (1971). A case becomes moot "when the issues presented are no longer 'live' or parties lack a legally cognizable interest in the outcome." *County of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979) (quoting *Powell v. McCormack*, 395 U.S. 486, 496 (1969).

On August 16, 2001, the City of Richmond repealed the conditional use provision contained in Ordinance 01-12. *See* defendant's exhibit Ordinance 01-30. The plaintiffs have attempted to ignore this amendment by stating that "the constitutionality of that ordinance is not before this Court." *Plaintiffs' post-trial brief*, p.13 n.3. Instead, the plaintiffs seek a "declaration that Ordinance No. 01-12 is unconstitutional, an injunction prohibiting further enforcement of the ordinance, and monetary damages for the period of time during which the City unlawfully required Plaintiffs to cease operations." *Plaintiffs post-trial brief*, p.16. The law is clear that a change in a statute addressing its alleged unconstitutional aspects renders a plaintiff's challenge to the

statute moot. *See e.g., Lewis v. Continental Bank Corp.*, 494 U.S. 472, 478 (1990); *Burke v. Barnes*, 479 U.S. 361, 365 (1987); *United States Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms v. Galioto*, 477 U.S. 556, 559-60 (1986); *Naturist Soc'y Inc. v. Fillyaw*, 958 F.2d 1515, 1520 (11th Cir. 1992)[6]

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[6] Originally, the plaintiffs alleged vagueness and overbreadth challenges to the Development Ordinance and its 01-12 amendments. *See* plaintiffs' complaint, p.7-8. The plaintiffs argued that the Ordinance 01-12 use of "adult bookstore" was both vague and overbroad. *See* plaintiffs' memorandum in support of temporary restraining order and preliminary injunction, p.8. The plaintiffs have acknowledged and stipulated at trial that Expressway Video is an adult bookstore within the meaning of the Richmond Ordinances. *See* trial transcript, p, 5-6. Consequently, the plaintiffs have waived such challenges by failing to produce any evidence at trial and failing to raise any corresponding arguments in their post trial brief and proposed findings of fact in support of their vagueness and overbreadth challenges to the Development Ordinance.

Regardless, the plaintiffs' vagueness and overbreadth challenges are not well taken as they have acknowledged the fact that their business applies to the statutory definition. *See Parker v. Levy*, 417 U.S. 733, 756 (1974) ("[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness."); *Young v. American Mini-Theatres, Inc.*, 427 U.S. 50, 61 (1976) ("even if there may be some uncertainty about the effect of the ordinances on other litigants, they are unquestionably applicable to these respondents...[i]t is clear, therefore, that any vagueness in these ordinances has not affected these respondents."); *Richland Bookmart, Inc. v. Nichols*, 137 F.3d 435, 441 (6th Cir. 1998). As for overbreadth, the allegedly unconstitutional conditional use permit has been amended while this case was pending and "overbreadth analysis is inappropriate if the statute being challenged has been amended or repealed." *Massachusetts v. Oakes*, 491 U.S. 576, 582 (1989); *Lewis*, 494 U.S. 472 (1990).

A case or controversy that is no longer active can overcome the mootness doctrine only where "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." *United States of America v. Thomas*, 2002 WL 336958 *2 (citing *Weinstein v. Bradford*, 423 U.S. 147, 148 (1975)).

Here, the Court is obviously unable to declare the conditional use provisions of Ordinance 01-12 unconstitutional, or enjoin further enforcement of these provisions because on August 16, 2002, the City of Richmond amended Ordinance 01-12 to remove the conditional use procedure from the Development Ordinance and permit adult bookstores and other adult establishments as principal/primary uses. *See* plaintiffs' exhibit A, Ordinance 01-30. Any declaration or injunction by this Court would amount to a mere advisory opinion. As stated, the plaintiffs have ignored the mootness doctrine and the applicability of any exceptions. Regardless, the Court finds that the August legislation by the City of Richmond abolishing the conditional use scheme is reliable assurance that the City will not resume a conditional

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Finally, the plaintiffs alleged violation of the Kentucky Constitution in their complaint. *See* Plaintiffs' complaint, p.8. The plaintiffs have waived these challenges by failing to produce any evidence concerning the alleged violations of Kentucky Constitutional provisions at trial and by failing raise any corresponding arguments in their post trial brief and proposed findings of fact. In fact, the plaintiffs' counsel disclaimed any Kentucky constitutional law challenge at trial. *See* trial transcript, p, 10-12. In addition, the plaintiffs' Kentucky law challenge is dismissed due to the plaintiffs' failure to notify the Kentucky Attorney General of the challenge pursuant to K.R.S. § 4183.075.

use policy for adult-oriented businesses such as plaintiffs subsequent to this litigation. *See Grano v. Barry*, 733 F.2d 164, 167-68 (D.C. Cir. 1984).

Aside from the August amendments, the plaintiffs' claim for money damages is independently moot because even if the plaintiffs had standing to challenge the conditional use provision for I-2 zones, and the court found this conditional use requirement unconstitutional, the plaintiffs' Expressway Video store would not constitute a non-conforming use preexisting the August amendments to the Development Ordinance. The plaintiffs argue that absent the purportedly unconstitutional conditional use permit, the plaintiffs' business, as a generic "bookstore" is a non-conforming use immune from the August amendment to the Development Ordinance.

As pointed out by the City, the plaintiffs' argument fails to acknowledge the fact that Ordinance 01-12 contains a severability provision, and thus Expressway Video was located in the wrong zone even if the conditional use provision of Ordinance 01-12 was found unconstitutional.[7] Moreover, even if the court struck down the conditional use provision, a non-conforming use is defined as "an activity or a building...which *lawfully* existed before the adoption or amendment of the zoning regulation which pertain to the zone in which it is located." K.R.S. 100.111(13) (Banks-Baldwin, 2002) (emphasis added).

Here, the plaintiffs' business did not lawfully exist prior to the August amendments because the trial testimony was

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[7] *See supra*, section D-1. (discussing the impact of the Ordinance 01-12 severability clause).

unchallenged that the plaintiffs' business operated without a certificate of occupancy in a direct violation of the Kentucky Building code and the Development Ordinance. *See* trial transcript, p. 79-81. The plaintiffs failed to meet their responsibility as a business owner to obtain the occupancy permit. *Id.* Consequently, independently of the plaintiffs' lack of standing to challenge the conditional use permit and independently of the severability clause establishing that the plaintiffs were located in the wrong zone, Expressway Video did not constitute a lawful non-confirming use. Therefore, the questions of any award of monetary damages is moot as such an order would make no difference to the legal interests of the plaintiffs' business that was operating unlawfully for reasons independent of the constitutional challenges presented in this case.[8]

E. Attorney's Fees

The plaintiffs' complaint seeks an award of attorneys' fees and expense of litigation pursuant to 42 U.S.C. § 1988 as the prevailing party in a civil rights action. *See* plaintiffs' complaint, p.12.

The Sixth Circuit has previously held that, even when no judicial relief is ordered on a plaintiff's behalf, the plaintiff may still be considered a "prevailing Party" if the "lawsuit produces voluntary action by the defendant that affords the plaintiff all or some of the relieve he sought through a

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[8] The Court notes that the doctrine of unclean hands prevents the plaintiffs from recovering monetary damages as well. The trial testimony was undisputed that the plaintiffs obtained a business license to operate in the B-3 zone by deception. *See, e.g., Guerrero v. White*, 1999 WL 1282481 *3 (6th Cir. Tenn); *Mason v. Short*, 1999 WL 701919 *2 (6th Cir. Ky).

judgment[.]" *Payne v. Bd. of Educ., Cleveland City Schs.*, 88 F.3d 392, 397 (6th Cir. 1996) (quotation omitted). Pursuant to *Payne*, a plaintiff, to recover attorney's fees, had to show that it was their suit which was the "catalyst" that led to the defendant's change in past practices. *Id.*

The Supreme Court has recently overruled *Payne* and struck down the use of the "catalyst theory" as a permissible basis for an ward of attorney fees. *See Buckhannon Bd. & Care Home, Inc., v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 1004 (2001). In *Buckhannon*, the petitioner sought a declaration that a state law violated the Fair Housing Amendments Act, 42 U.S.C. § 3601 et. seq., and the Americans with § 1210 *et seq.* *Id.* At 601. While the litigation was pending, the West Virginia state legislature repealed the state law that was the subject of the plaintiff's challenge. *Id.* The District Court then granted the defendants' motion to dismiss the case as moot. *Id.*

The United States Supreme Court ultimately affirmed the District Court and Fourth Circuit's denial of the petitioner's request for attorney's fees by rejecting the "catalyst" theory for defining a "prevailing party." *Id.* at 605. *Buckhannon* stated, "a defendant's voluntary change in conduct, although perhaps accomplishing what the plaintiff sought to achieve by the lawsuit, lacks the necessary judicial imprimatur on the change." *Id.* Consequently, pursuant to *Buckhannon*, to satisfy the prevailing party requirements, there must be a judicially sanctioned change in the parties' legal relationship, whether through an enforceable judgment on the merits or through a court-ordered consent decree. *Id.* Previous Sixth Circuit law, such as *Owner-Operator Independent Drivers Ass'n Inc., v. Bissell*, 210 F.3d 595, 597-98 (6th Cir. 2000) (permitting prevailing party status derived from a voluntary

change in the defendant's behavior), has been overruled in light of *Buckhannon*.

Here, the plaintiffs have clearly not obtained a favorable ruling on the merits, nor has there been a court ordered consent decree as *Buckhannon* requires for prevailing party status. To be sure, even if the Court's Opinion & Order indicated a potential violation of the Constitution, the plaintiffs would still not be entitled to attorneys' fees because the Court has ordered no judicial relieve in this case. *See Toms v. Taft,* 2001 WL 1681120 *3 (S.D. Ohio 2001). Although *Buckhannon* involved a petition for attorney's fees under statutes other than 42 U.S.C. § 1988 at issue here, the Supreme Court expressly stated that all statutes, including § 1988, that authorize attorney's fees to the "prevailing party" are to be treated consistently. *See Chambers v. Ohio Dep't of Human Services*, 273 F.3d 690, 693 n.1 (6th cir. 2001) (citing *Buckhannon*, 532 U.S. at 1839 n.4); *Former Employees of Motorola Ceramic Products v. United States*, 176 F.Supp.2d 1370, 1373 (Ct. Int'l Trade 2001). Accordingly, the plaintiffs are not prevailing parties and the motion for attorney's fees shall be denied.

IV. CONCLUSION

Based on the foregoing, the Court, being otherwise fully and sufficiently advised, HEREBY ORDERS that

(1) plaintiffs' motion for declaratory, injunctive, and monetary relief [DE #2] is DENIED;

(2) judgment on plaintiffs' claims is entered contemporaneously with this Opinion and Order in favor of the defendant;

(3) the Clerk is directed to remove all pending motions from the Court's pending motion list, including defendant's motion to quash subpoenas [DE #13] and defendant's motion for an extension of time to file an answer [DE #15]. These motions are DENIED as moot;

(4) this judgment is final and appealable and no just cause for delay exists; and

(5) this matter is DISMISSED WITH PREJUDICE and STRICKEN from the active docket.

This 29th day of March, 2002

/s/_____
KARL S. FORESTER,
CHIEF JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

CIVIL ACTION NO. 01-283- KSF

[Filed March 29, 2002]

BRANDYWINE, INC. d/b/a	)
EXPRESSWAY VIDEO and	)
GARY R. SEW ELL	)
PLAINTIFFS	)
	)
v.	)
	)
CITY OF RICHMOND, KENTUCKY	)
DEFENDANT	)
	)

JUDGMENT

In accordance with the Opinion and Order entered contemporaneously with this summary judgment, the Court HEREBY ORDERS AND ADJUDGES that

(1) plaintiffs' motion for declaratory, injunctive and monetary relief [DE #2] is DENIED;

(2) plaintiffs' motion for attorney's fees [DE #2] is DENIED;

(3) judgment on plaintiffs' claims is ENTERED in favor of DEFENDANT;

(4) any remaining motions are DENIED as moot;

(5) this judgment is final and appealable and no just cause for delay exists; and

(6) this matter is STRICKEN from the active docket.

This 29th day of March, 2002

/s/_____
KARL S. FORESTER,
CHIEF JUDGE

APPENDIX C

ORDINANCE NO. 01-12

AN ORDINANCE OF THE RICHMOND CITY COMMISSION AMENDING THE DEVELOPMENT ORDINANCE OF THE CITY OF RICHMOND, KY

WHEREAS, the City of Richmond has adopted a Development Ordinance that regulates the Development in the City of Richmond, and

WHEREAS, periodic reviews of city ordinances are implemented to determine the need for amendments, and

WHEREAS, a review of the Development Ordinance has determined that a change is necessary,

NOW, THEREFORE BE IT ORDAINED by the Richmond City Commission that:

SECTION I

(A) The Development Ordinance of the City of Richmond is hereby amended as follows:

401 Procedures

401.2 Amending the Ordinance.

(2) Notice of a public hearing on the amendment shall be given by the Planning and Codes office as follows:

For a text amendment, notice of the time, place, and reason for holding a public hearing shall be given by one publication in the newspaper of general circulation in the county, not less than seven (7) days not more than twenty-one (21) days before the public hearing.

(B) This amendment is necessary to comply with the provision of KRS 424.530(d).

(C) There is also amended the following section in the Richmond Development Ordinance.

402.32 Heavy Industrial District (I-2)

402.33 USES

To be added:

	I-2
Adult Night Clubs	C
Adult Bookstores	C
Adult Novelty Stores	C
Massage Parlors other than Professional	C
Relaxation Therapy and related Services	C
Activities of a Nude or Nearly Nude Nature	C

SECTION II

(A) All other parts of the Development Ordinance are in full force and effect as if they were set out in full herewith.

This ordinance shall become effective upon second reading and passage by the Richmond City Commission.

DATE OF FIRST READING: April 2, 2001

DATE OF SECOND READING: April 3, 2001

MOTION BY: Commissioner Brewer

SECONDED BY: Commissioner Hacker

VOTE:	YES	NO
Commissioner Brewer	X	
Commissioner Hacker	X	
Commissioner Jones	X	
Commissioner Strong	X	
Mayor Durham	X	

/s/_____
MAYOR

ATTEST:

/s/_____
CITY CLERK

APPENDIX D

ORDINANCE NO. 01-30

AN ORDINANCE OF THE CITY OF RICHMOND, KENTUCKY AMENDING THE DEVELOPMENT ORDINANCE OF THE CITY OF RICHMOND, KENTUCKY.

WHEREAS, the City of Richmond, Kentucky (hereinafter, the "City") has adopted a Development Ordinance (hereinafter, the "Ordinance") regulating and providing for development within the City; and

WHEREAS, the Ordinance provides for the division of the City into zoning districts in order that the integrity of neighborhoods within City boundaries, whether such neighborhoods be residential, business, commercial, or industrial, be maintained; that the City's retail trade be protected; that property values be maintained; and that the quality of its neighborhoods, commercial districts, and urban life be preserved; and

WHEREAS, the Commonwealth of Kentucky, acting by and through its legislature, has heretofore enacted legislation, codified as KRS 82.088, making findings concerning and addressing the secondary effects of adult establishments upon local communities; and

WHEREAS, the Board of Commissioners for the City (hereinafter, the "Board") has heretofore enacted Ordinance 01-12, an ordinance which amends the Development

Ordinance and which takes legislative notice of KRS 82.088, the experience of other cities, and that of the City itself, in an effort to address the negative secondary effects of Adult Establishments such as are enumerated in Ordinance 01-12; and

WHEREAS, the City Manager for the City has studied the effects which certain Adult Establishments, as that term is hereinafter defined, exert upon neighborhood integrity, retail trade, property values, and the quality of neighborhoods, commercial districts, and urban life, and has made report concerning same to the Board, such study by the City Manager having included his examination of the findings incorporated in studies of this issue conducted in and by other communities, including Minneapolis, Minnesota; St. Paul, Minnesota; Indianapolis, Indiana; Garden Grove, California; Austin, Texas; Beaumont, Texas; Newport News, Virginia; Bellevue, Washington; St. Croix County, Wisconsin; Dallas, Texas; Manatee County, Florida Outgamie County, Wisconsin; New Hanover City, North Carolina; Phoenix, Arizona; Whittier, California, together with summaries of similar studies conducted by numerous other municipalities, counties, or communities; and

WHEREAS, in light of the report of the City Manager, the findings of the Kentucky legislature, the experiences of other communities, and the experiences of the City itself, the Board has determined, and does hereby find, that the Development Ordinance and Ordinance 01-12 should be amended in the particulars hereinafter set forth;

NOW, THEREFORE, be it ordained as follows:

SECTION I

The Board finds that unless the siting of Adult Establishments, as that term is hereinafter defined, is properly regulated:

(1) Such Adult Establishments have a deleterious effect on existing businesses and retail trade around them; and

(2) Such Adult Establishments result in the lowering of the values of surrounding properties; and

(3) Such Adult Establishments are frequently used by their patrons for unlawful purposes and frequently generate an increase in crime and criminal activities both on their premises and in their immediate vicinity, all with a corresponding devaluation of surrounding property values, of neighborhood integrity, and of the quality of urban life; and

(4) Such Adult Establishments contribute to neighborhood blight, particularly when they are concentrated in close proximity to one another.

The Board finds, further, that such secondary effects of Adult Establishments can best be minimized by requiring that (1) such establishments be dispersed from one another and from schools, churches, parks, and residential areas, and (ii) such establishments be located only within the I-2 Zoning Districts of the City.

SECTION II

Section 402-33 of the Ordinance is hereby amended by adding to the uses permitted in industrial zoning district within the City the following:

	I-1	I-2
Adult Establishments		P
Massage Parlors other than Professional		C
Relaxation Therapy and Related Services		C

SECTION III

Section 402 of the Ordinance is hereby amended by adding to it a new Section, to be codified as Section 402.34, to read as follows:

Section 402.34. Definitions

1. The term "Adult Establishments" as used in Section 402.33 shall be defined to include any commercial establishment, business, or service which offers, as its principal or predominant stock or trade, sexually oriented material, devices, or paraphernalia or specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded, or live, or which commercial establishment, business, or service is distinguished or characterized by an emphasis on matter depicting, describing, or relating to sex.

2. The term "sexually oriented material" as used in subsection I, above, shall be defined to include any book, article, magazine, publication or written matter of any kind, drawing, etching, painting, photograph, motion picture in any format, film, or sound recording which depicts sexual activity, actual or simulated, involving

human beings or which exhibits specified anatomical areas.

3. The term "specified sexual activities" as used in subsection 1, above, shall be defined to include the exhibition of human genitals in a state of sexual stimulation or arousal; acts of human masturbation, sexual intercourse, or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

4. The term "specified anatomical areas" as used in subsection 2, above, shall be defined to include less than completely and opaquely covered human genitals, pubic region, buttock, anus or anal cleft, female breast below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

SECTION IV

Section 402 of the Ordinance is hereby amended by adding to it a new Section to be codified as 402.35, to read as follows:

402.35 Permissible Locations of Adult Establishments Within I-2 Zoning District.

1. No Adult Establishment shall be located within 500 feet of any other Adult Establishment; or (ii) within 1,000 feet of a public or private educational facility including child day care facilities, nursery schools, preschools, kindergartens, elementary schools, intermediate schools, junior schools, high schools, special education schools, junior colleges, colleges, and universities, all including the school grounds but not including facilities used primarily for another

purpose and only incidentally as a school; a public park; or the boundary line of a residential zoning district.

2. Measurements made in accordance with subsection 1, above, shall be in a straight line as the crow flies and made in the following fashion:

   a. In the case of a building, from the ingress or egress door(s) of the Adult Establishment to the point on the building closest in proximity to the said ingress or egress door(s);

   b. In the case of a public park or of school grounds from the ingress or egress door(s) of the Adult Establishment to the point on the boundary line of the public park or school grounds closest proximity to the said ingress or egress door(s);

   c. In the case of a residential zoning district, from the ingress or egress door(s) of the Adult Establishment to the point on the boundary line of the residential zoning district closest in proximity to the said ingress or egress door(s); and

   d. In the case of another Adult Establishment from the ingress or egress door(s) of one Adult Establishment to the ingress or egress door(s) of another Adult Establishment.

SECTION V

The Development Ordinance and Ordinance 01-12 are hereby amended in accordance with the forgoing provisions.

SECTION VI

This ordinance shall be effective immediately upon passage by the City of Richmond Board of Commissioners.

DATE OF FIRST READING: August 14, 2001

DATE OF SECOND READING: August 16, 2001

MOTION BY: Commissioner Brewer

SECONDED BY: Commissioner Strong

VOTE:	YES	NO
Commissioner Brewer	X	
Commissioner Jones	X	
Commissioner Strong	X	
Commissioner Tohler	X	
Mayor Durham	X	

/s/_____
MAYOR

ATTEST:

/s/_____
CITY CLERK

APPENDIX E

DEVELOPMENT ORDINANCE OF RICHMOND, KENTUCKY

R-1B

RICHMOND PLANNING COMMISSION

OCTOBER 1997
(Includes revisions through October 8, 1997)

CITY OFFICIALS

Mayor Ann L, Durham
Commissioner Mike Brewer
Commissioner Joe Hacker
Commissioner Kay Jones
Commissioner Tom Tobler

David Evans, City Manager

Richard Boneta, Director of Codes and Planning

PLANNING COMMISSION

Robert Blake
Hobart Carnes Jr. Chairman
John Connor
David L. Rush
George White, Vice Chairman
Jeanine Wiggins

Jean Logue, City Attorney

Anna Kelley, Secretary

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ARTICLE I
INTRODUCTION

This unified ordinance is designed to combine in one text regulations normally found in separate zoning and subdivision ordinances. In addition, it provides a summary of the principle development codes for buildings. The ordinance is written in such a way as to make it easier to use, to illustrate some of the important concepts, and to avoid duplications or inconsistencies commonly found in separate documents.

The ordinance is designed to simplify the review process for developers by having all of the necessary procedures arranged in logical order under one cover. It tries to allow for some flexibility in design and development while being careful to protect the health, safety, and general welfare of citizens. One goal of the ordinance is to avoid excessive regulation and costs. Finally, the ordinance attempts to spell out, in sufficient detail, how to go about getting things done.

This development ordinance includes a number of references to the city's comprehensive plan. It is important that guidelines for what should happen in the future are closely linked to the means for seeing that these things happen. It is the desire of the Richmond Planning Commission that, through the use of this document, development will improve along with the quality of life for the citizens of Richmond.

ARTICLE II
GENERAL PROVISIONS

200 TITLE

This ordinance shall be known and may be cited to as the "Development Ordinance for the City of Richmond, Kentucky."

201 AUTHORITY

These regulations are adopted under the authority granted in Kentucky Revised Statutes (K.R.S.) Chapter 100.

202 PURPOSE

The general purpose of this ordinance is to regulate the use of land and structures, the subdivision and development of land, and the development of structures within the city of Richmond and its extraterritorial jurisdiction (as applicable), all for the purpose of protecting the public health, safety, comfort, and general welfare.

Article III provides for the administration of this ordinance, defining the powers and duties of the governmental bodies and individuals as provided hereafter, and prescribing penalties for the violation of the provisions in this ordinance or any amendment thereto.

Article IV divides the city into zones and districts, encouraging, regulating, and restricting therein the location, construction, reconstruction, alteration, and use of structures and land; promoting the orderly development of residential, business, industrial,

recreation, and public areas; providing for adequate light, air, and convenience of access to property by regulating the use of land and buildings and the bulk of structures in relationship to surrounding properties; limiting congestion in the public right-of-ways; providing the compatibility of different land uses and the most appropriate use of land.

Article V deals with the subdivision of land and the development of streets, utilities, and other physical improvements needed for development. Land subdivision is often the first step in the process of community development. Once land has been divided into streets, blocks, lots, and open spaces, a pattern has been established which usually determines how well community needs for residential, commercial, industrial, and public land will be met. It also determines to a great extent how well the community will be able to meet these needs.

After land has been subdivided and publicly recorded, it is very difficult and costly to correct defects and deficiencies in the subdivision layout and in the facilities provided. In addition, a subdivided area eventually becomes a public responsibility in that its streets must be maintained and its residents must be provided with a variety of public services. In reality, the welfare of the entire community is affected in many respects. The quality of the community is to a large degree a reflection of the quality of individual subdivision developments, since it is an accumulation of subdivisions over a period of time. The guidance of land division and development in harmony with community goals and objectives is therefore a matter of serious public concern. It is in the interest of the

public, the developer, and the future property owners that subdivisions be conceived, designed, and developed in accordance with sound rules and proper standards.

The regulations contained in Article V are designed to provide for the harmonious development of the subdivided area; for a coordinated layout; for the proper arrangement of streets; for adequate and convenient open spaces; for traffic, utilities, recreation, light, air, and access of firefighting equipment; for avoidance of population congestion through requirements for minimum lot widths and lot areas; for adequate provision of water, drainage, sewer, and other sanitary facilities; and for reducing flood damage potentials to the greatest extent possible.

Article VI provides a summary of the primary codes that guide structural development in the community. The overall purpose of the codes program is to insure that all buildings are constructed in such a way as to protect the health, safety, and general welfare of the occupants. Included among the code programs are building codes, electrical codes, plumbing codes, and housing codes.

Article VII defines the most important terms included in the ordinance. In a period of increasing legal considerations, it is important that terms be clearly defined and easily understood by officials, developers, and others who use this ordinance.

203 JURISDICTION

On and after the date of adoption, these regulations shall govern land use and structural development in Richmond and the surrounding area as described below:

1. The regulations governing the use of land and structures (zoning) are applicable to the area within the corporate limits of the City of Richmond.

2. The regulations governing the subdivision and development of land are applicable to the areas within the corporate limits of the City of Richmond, and to the surrounding area within five (5) miles of Richmond's corporate boundaries (as delimited on the Official Map of Subdivision Jurisdiction for Richmond).

3. The regulations governing the development of buildings(building, plumbing, electrical, and housing codes) are applicable to the area within the corporate boundaries of the City of Richmond.

204 MINIMUM REQUIREMENTS

In their interpretation and application, the provisions of this ordinance shall be held to be minimum requirements, adopted for the promotion of the public health, safety, and general welfare. The Planning Commission may require standards above the minimum contained herein whenever it finds that the protection of public health, safety, and welfare justify such increases.

205 CONSISTENCY WITH OTHER PROVISIONS

Whenever there is a discrepancy between minimum standards set forth in these regulations and those of other lawfully adopted rules, regulations, resolutions, or ordinances, the most restrictive or highest standard shall apply.

206 SEPARABILITY AND SEVERABILITY

Should any section or provisions of these regulations be, for any reason, held void or invalid, it shall not affect the validity of any other section or provision thereof which is not itself void or invalid.

207 RELATION TO COMPREHENSIVE PLAN

The implementation of these regulations is closely related to the attainment of goals and objectives contained in the Comprehensive Plan for the City of Richmond.

208 REPEAL OF CONFLICTING ORDINANCES

All ordinances or parts of ordinances in conflict with this ordinance or inconsistent with the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect.

209 EFFECTIVE DATE

This ordinance shall become effective from and after the date of its approval and adoption.

October 19, 1993

ARTICLE III
ADMINISTRATION AND ENFORCEMENT

300 THE CITY COMMISSION

The City Commission consists of a Mayor, elected for a four-year term, and four Commissioners, each elected for two-year terms. This body is responsible for overall governance of the city. They meet twice each month, and on call as needed, in order to transact the city's business.

The commission's specific responsibilities related to planning and development activities fall into two categories-

1. The development, adoption, and administration of laws, regulations, and rules (ordinances, resolutions, orders, etc.) for conduct of the city's affairs. The body formally adopts the Comprehensive Plan which serves as the general guide for future development. In zoning, the city Commission makes the final decisions regarding specific zoning map and text amendments. In the subdivision and development of land and the enforcement of codes, they are represented in the process by members from appropriate city departments or agencies (Planning and Codes, Streets, Fire Department, Utilities, etc.).

2. The provision of personnel to oversee the planning and development process to include the Planning Commission, Technical Advisory Committee members, Landscape Review Committee, Board of Adjustments, Planning and Codes Department, planning consultant, legal counsel, etc.

301 PLANNING COMMISSION

The Planning Commission shall consist of seven members. Six members shall be residents of the City of Richmond and one member shall be from the five mile planning area. At least five of the members shall be citizen members. The Planning Commission as constituted at the time of adoption of this ordinance shall continue in power. Future appointment shall be in keeping with requirements of this section.

APPOINTING AUTHORITY - The Mayor of Richmond shall appoint the six city members of the Planning Commission with the approval of the City Commission. The County Judge Executive shall appoint the county member with approval of the fiscal court.

TERM OF OFFICE - The term of office of all elected public officials shall be the same as their official tenure in office. The terms of office for other members shall be four years, but the term of office of members first appointed shall be staggered so that a proportional number serve one, two, three, and four years respectively, and later appointments or reappointments shall continue the staggered patterns.

VACANCIES - Vacancies shall be filled within sixty (60) days by the Mayor or Judge Executive (as applicable). If the Mayor (or Judge Executive) fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.

OATH OF OFFICE- All members of the Planning Commission shall, before taking office, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any judge, notary public, clerk of a court, or justice of peace within Madison County.

REMOVAL - Any member of the Planning Commission may be removed by the Mayor (or Judge Executive) with approval of the appropriate governmental body for inefficiency, neglect of duty, malfeasance, or conflict of interest.

MEETINGS, PROCEDURES - The Planning Commission shall elect a chairman and vice chairman and adopt rules necessary to the conduct of its affairs in keeping with the provisions of this ordinance. Regular meetings shall be held at least six times annually. Special meetings shall be held at the call of the chairman and at such other times as the Commission may determine. All meetings shall be open to the public. The Commission shall keep minutes of its procedures, including regulations, transactions, findings, and determinations, and the number of votes for and against each question, and if any member is absent or disqualifies from voting, indicating the fact.

A simple majority of the total membership of the Commission (four) shall constitute a quorum. A member baying a financial interest in the outcome of any application before the Commission shall disclose the nature of the interest and shall disqualify himself (herself) from voting on the question, and shall not be counted for the purpose of a quorum. If it is

discovered that a member failed to properly excuse himself (herself); his (her) vote on the issue in questions will be void. A simple-majority vote of all members present where there is a properly constituted quorum shall be necessary to transact any official business except that a vote of a simple majority of the total membership shall be necessary for the adoption of amendment of the commission's bylaws, or for elements of the comprehensive plan or regulations.

DUTIES- The Planning Commission shall:

1. Prepare a comprehensive plan.
2. Review and amend the comprehensive plan as necessary.
3. Review all proposed amendments to this ordinance and make recommendations to the city commission.
4. File certificates of land use restrictions.

EMPLOYING PLANNERS OR OTHER PERSONS - The Planning Commission may employ a staff or contract with planners or other persons as it deems necessary to accomplish its assigned duties.

FINANCES - The city commission may appropriate out of general revenues for the expenses and accommodations necessary for the work of the Planning Commission. The Planning Commission shall have the right to receive, hold, and spend funds which it may legally receive from any and every source both in and out of the Commonwealth of Kentucky, including the U.S. Government, for the purpose of carrying out its duties.

302 THE BOARD OF ADJUSTMENTS

MEMBERSHIP, APPOINTMENT, TERM, VACANCIES OATH, REMOVAL, AND 0FFICERS - The Board shall consist of five members, all of whom must be citizen members and must reside within a five mile radius of the city limits. Not. more than two of the members may be citizen members of the planning commission. Board members shall be appointed by the Mayor, subject to the approval of the City Commission. The term of office shall be for four years, but the term of office of members first appointed shall be. staggered so that a proportionate number serve one, two, three, and four years respectively. The Board as constituted at the time of adoption of this ordinance shall continue in power. Future appointments shall be made as required in this Section of the Ordinance.

Vacancies on the board shall be filled within sixty (60) days by the Mayor subject to approval by the City Commission. If the Mayor fails to act within that time, the Planning Commission shall fill the vacancy. When a vacancy occurs other than through expiration of the term of office, it shall be filled for the remainder of that term.

All members shall, before taking office, qualify by taking the oath of office prescribed by Section 228 of the Constitution of the Commonwealth of Kentucky before any judge, notary public, clerk of a court, or justice of the peace within Madison County.

Any member of a board of adjustments may be removed by the Mayor, subject to approval by the City Commission, for inefficiency, neglect of duty, malfeasance, or conflict of interest. The Mayor shall submit a written statement to the commission setting forth the reasons for removal and the

statement shall be read at the next meeting of the Board of Adjustments, which shall be open to the general public. The members removed shall have the right of appeal from the removal in the circuit court.

Each board of adjustments annually shall elect a chairman, vice-chairman, and secretary, and any other officers it deems necessary, and any officer shall be eligible for re-election at the expiration of his term.

MEETINGS OF BOARD; QUORUM; MINUTES; BYLAWS - The board of adjustments shall conduct meetings at the call of the chairperson who shall give written or oral notice to all members of the board at least seven (7) days prior to the meeting, which notice shall contain the date, time, and place for the meeting, be listed in the local paper at least seven (7) days in advance of a called meeting, and a copy of the agenda sent to the Mayor and members of the City Commission.

A simple majority of the total membership of the board of adjustments as established by regulation or agreement shall constitute a quorum. Any member of a board of adjustments who has any direct or indirect financial interest in the outcome of any question before the body shall disclose the nature of the interest and shall disqualify himself (herself} from voting on the question.

The board of adjustments shall adopt bylaws for the transaction of business and shall keep minutes and records of all proceedings, including regulations, transactions, findings, and determinations and the number of votes for and against each question, and if any member is absent or abstains from voting, indicating the fact, all of which shall, immediately after adoption be filed in the office of the board. If the board has no office, such records may be kept in

custody of an officer of the board and shall be available to the general public. A transcript of a board of adjustments meeting shall be provided if requested by a party, at the expense of the requesting party, and the transcript shall constitute the record.

EMPLOYING PLANNERS OR OTHER PERSONS - The board of adjustments may employ Or contract with planners or other persons as it deems necessary to accomplish its assigned duties under this chapter.

FINANCES - The board of adjustments shall have the right to receive, hold, and spend funds which it may legally receive from any and every source in and out of the Commonwealth of Kentucky, including the United States Government, for the purpose of carrying out the provisions of this chapter.

SUBPOENA POWER -The board of adjustments shall have the power to issue subpoenas to compel witnesses to attend its meetings and give evidence bearing upon the questions before it. The sheriff shall serve such subpoenas. The circuit court may, upon application by the board, compel obedience to such court or such subpoena by proceedings of contempt.

ADMINISTRATION OF OATHS - The Chairperson of the board of adjustments shall have the power to administer an oath to witnesses prior to their testifying before the board on any issue.

POWERS AND DUTIES OF BOARD OF ADJUSTMENTS - In exercising its duties, the Board may, as long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination, as ought to be made, and to that end shall have the powers of the

Administrative Official from whom the appeal is taken. The concurring vote of the three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Administrative Official, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance or to effect any variation in the application of this ordinance. For the purpose of this ordinance, the Board has the following specific responsibilities:

CONDITIONAL USE PERMITS - The board shall have the power to hear and decide applications for conditional use permits to allow the proper integration into the community of uses which are specifically named in the zoning regulations which may be suitable only in specific locations in the zone only if certain conditions are met:

The board may approve, modify, or deny any application for a conditional use permit. If it approves such permit, it may attach necessary conditions such as time limitations, requirements that one or more things be done before the request can be initiated, or conditions of a continuing nature. Any such conditions shall be recorded in the board's minutes and on the conditional use permit along with a reference to the specific section in the zoning regulation listing the conditional use under consideration. The board shall have power to revoke conditional use permits, or variances for non-compliance with the condition thereof. Furthermore, the board shall have a right of action to compel offending structures or uses removed at the cost of the

violator and may have judgment in person for such cost.

Granting of a conditional use permit does not exempt the applicant from complying with all of the requirements of building, housing, and other regulations.

In any case where a conditional use permit has not been exercised within the time limit set by the board, or within one year if no specific time limit has been set, such conditional use permit shall not revert to its original designation, unless there has been a public hearing. Exercised as set forth in this section, shall mean that binding contracts for the construction of the main building or other improvement has been let; or in the absence of contracts that the main building or other improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investment shall be under contract, in development, or completed.

> When construction is not part of the use, exercised shall mean that the use is in operation in compliance with the conditions as set forth in the permit.

The Administrative Official shall review all conditional use permits except those for which all conditions have been permanently satisfied, at least once annually and shall have the power to inspect the land or structure where the

conditional use is located in order to ascertain that the landowner is complying with all of the conditions which are listed on the conditional use permit. If the landowner is not complying with all of the conditions listed on the conditional use permit, the Administrative Official shall report the fact in writing to the chairman of the board of adjustments. The report shall state specifically the manner in which the landowner is not complying with the conditions on the conditional use permit and a copy of the report shall be furnished to the landowner at the same time that it is furnished to the chairman of the board of adjustments. The board shall hold a hearing on the report within a reasonable time, and notice of the time and place of the hearing shall be furnished to the landowner at least one week prior to the hearing. If the board of adjustments finds that the facts alleged in the report of the Administrative Official are true and that the landowner has taken no steps to comply with them between the date of the report and the date of the hearing, the board of adjustments may authorize the Administrative Official to revoke the conditional use permit and take the necessary legal action to cause the termination of the activity on-the land which the conditional use permit authorizes.

Once the board bf adjustments has completed a conditional use permit and all the conditions required are of such type that they can be completely and permanently satisfied, the Administrative Official, upon request of the

applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and the conclusion in the margin of the copy of the conditional use permit which is on file with the county clerk, as required in KRS 100.329. Thereafter said use, if it continues to meet the other requirements of the regulations, will be treated as a permitted use.

When an application is made for a conditional use permit for land located within or abutting any residential zoning district, written notice shall be given at least fourteen (14) days in advance of the public hearing on the application to the applicant, administrative official, and owner or person(s) rental or leasing of every parcel of property adjoining the property to which the application applies and such other persons as the local zoning ordinance or board of adjustment bylaws shall direct. Written notice shall be by first class mail with certification by the board's secretary or other officer that the notice is mailed. It shall be the duty of the applicant to furnish to the board the name and address of any owner of each parcel of property as described in this subsection. Records maintained by the property valuation administrator may be relied upon to determine the identity and address of said owner. In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairperson of the owner group which administers property

commonly owned by the condominium or cooperative owners.

All conditional use permits approved by the board of adjustments shall be recorded at the expense of the applicant in the office of the county clerk.

NON-CONFORMITIES - within the districts established by the ordinance (and subsequent amendments) there exist lots, structures, and uses of lands and structures which were lawful before this ordinance was passed or amended, but which would be prohibited, regulated, or restricted under the forms of this ordinance or future amendments. It is the intent of this ordinance to permit these non-conformities to continue but not to allow their enlargement, expansion, or extension.

EXISTING NON-CONFORMING USES. CONTINUANCE, CHANGE - The lawful use of a lot or structure, existing at the time of adoption of any zoning regulations affecting it, may be continued, although such use does not conform to the provisions of such regulations, except as otherwise provided herein.

A non-conforming use-may lapse for a period of one year, without being considered abandoned. The property owner may appeal to the Board of Adjustments for an additional year prior to the end of the first year. Any lapse of a non-conforming use for a period of more than two years will result in the property being required to conform to existing zoning requirements regarding appropriate uses.

A residential dwelling may be built upon a lot which was non-conforming at the time this ordinance was adopted even though such lot fails to meet the requirements for area or frontage or both, that are generally applicable, in

the district. However, dimensional requirements other than those applying to area or frontage (or both) of the lots, shall conform to the regulations for the district in which such lot is located, variances must be obtained from the Board of Adjustments as described elsewhere in this ordinance.

The Board of Adjustments shall not allow the enlargement or extension of a non-conforming use beyond the scope and area of its operation at the time the regulation which makes its use nonconforming was adopted. Nor shall the board permit a change from one non-conforming use to another unless the new non-conforming use is in the same or a more restrictive classification.

REPAIR AND MAINTENANCE - Should any non-conforming structure or non-conforming portion of a structure be damaged, destroyed, or demolished by any means, it may be reconstructed or repaired, but not to exceed the number of cubic feet existing in it, and not to extend or enlarge the scope and area of its operation prior to its damage, destruction, or demolition.

VARIANCES - The board shall have the power to decide on applications for variances. The board may impose any reasonable conditions or restrictions on any variance it decides to grant.

FINDINGS NECESSARY FOR GRANTING VARIANCES - Before any variance is granted, the board must find all of the following, which shall be recorded along with any imposed conditions or restrictions in its minutes and records add issued in written form to the applicant to constitute proof of the variance: 1) That the granting of the variance will not adversely affect the

public health, safety or welfare, 2) will not alter essential character of the general vicinity, 3) will not cause a hazard or a nuisance to the public, and 4) will not allow an unreasonable circumvention of the requirements of these regulations. In making these findings, the board shall consider whether:

a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone.

b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought.

The board shall deny any request for a variance arising from circumstances that are the result of willful violations of the regulation by the applicant subsequent to the adoption of the regulation from which relief is sought.

A variance applies to the property for which it is granted, and not to the individual who applied for it. A variance runs with the land and is transferable to any future owner of the land, bun it cannot be transferred by the applicant to a different site.

All variances approved by the board of adjustments shall be recorded at the expense of the applicant in the office of the county clerk.

ADMINISTRATIVE REVIEW - The board of adjustments shall have the power to hear and decide cases where it is alleged bu an applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation. Such appeal shall be within thirty (30) days.

PROCEDURE FOR ALL APPEALS TO BOARD - Appeals to the board may be taken by any person, or entity, claiming to be injuriously affected or aggrieved by an official action or decision of any zoning enforcement officer. Such appeal shall, be taken within thirty (30) days after the appellant or his agent receives official notice of the action, by filing with said officer and with the board a notice of appeal specifying the ground thereof, and giving notice of such appeal to any and all parties of record. Said officer shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken and shall be treated as and be the respondent in such further proceedings- At the public hearing on the appeal held by the board, any interested person my appear and enter his appearance, and all shall be given an opportunity to be heard. The Board will rehear an appeal only in cases where new evidence is available, or where the appealing person or entity desires a complete transcription for the court record.

PUBLIC NOTICE OF APPEAL HEARING - The board shall fix a reasonable time for hearing the appeal and give public notice in accordance with KRS Chapter. 424, as well as written notice to the appellant and the administrative official at least one week prior to the hearing, and shall decide it within sixty (60) days. The affected party may appear at the hearing in person or by attorney.

APPEALS FROM BOARD OF ADJUSTMENTS - Any appeal from commission action may be taken in the following manner:

Any person or entity claiming to be injured or aggrieved by any final action of the board of adjustments shall appeal from the action to the circuit court of the county in which the property, which is the subject of the action of the board of adjustments, lies. Such appeal shall be taken within thirty (30) days after the final action of the board. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review. The board of adjustments shall be a party in any such appeal filed in the circuit court.

303 THE DEPARTMENT OF PLANNING AND CODES

The Department of Planning and codes is responsible for the review/revision and adoption of the Comprehensive Plan, and its implementation through the use of this ordinance. In addition to overseeing the use of land and structures, and the subdivision and development of land, this office enforces the various codes that pertain to structural development.

The Department of Planning and Codes is the recipient of all applications that are described in this ordinance.

ADMINISTRATIVE OFFICIAL - An Administrative Official designated by the City Commission shall administer and enforce this ordinance. The Administrative Official may be provided with the assistance of such other persons as the City Commission may direct.

For the purpose of the ordinance, the Administrative Official shall have the following duties:

Upon finding that any of the provisions of this ordinance are being violated, notify in writing the person responsible for such violation(s), ordering the action necessary to correct such violation;

Order discontinuance of illegal uses of land, buildings, or structures;

Order removal of illegal buildings or structures or illegal additions or structural alterations;

Order discontinuance of any illegal work being done; or

Take any other action authorized by this ordinance to ensure compliance with or to prevent violation(s) of this ordinance. This may include the issuance of and action on building permits and certificate of occupancy permits and such similar administrative duties as are permissible under the law.

Make records of all official actions of this office relating to the administration and enforcement of the provisions of this ordinance including, but not limited to, written records of all complaints and actions taken with regard thereto, all violations discovered and actions taken thereto, and the final disposition of all such matters.

Issue building permits or certificates of occupancy, or both, in accordance with the literal terms of the regulation, but may not have the power to permit any

construction, or to permit any use or any change of use which does not conform to the literal terms of the zoning regulation.

304 VIOLATIONS

304.1 C0MPLAINTS REGARDING VIOLATIONS

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint stating fully the causes and basis thereof, with the Administrative Official. The Administrative Official shall record properly such complaint, immediately investigate, and take action thereof as provided by this ordinance.

Any person or entity claiming to be injured or aggrieved by any final action of the planning commission shall appeal from the final action to the circuit court of the county in which the property, which is the subject of the commission's action, lies. Such appeal shall be taken within thirty (30) days after such action. Such action shall not include the commission's recommendations made to other governmental bodies. All final actions which have not been appealed within thirty (30) days shall not be subject to judicial review, provided any appeal of a planning commission action granting or denying a variance or conditional use pertain authorized by KRS 100.203(5) shall be taken pursuant to this subsection. In such case, the thirty (30) day period for taking an appeal begins to run at the time the legislative body grants or denies the map amendment for the same development. The planning commission shall be a party in any such appeal filed in the circuit court.

Any person or entity claiming to be injured or aggrieved by any final action of the city commission relating to a map amendment shall appeal from the action to the circuit court of the county in which the property, which is the subject of the map amendment, lies. Such appeal shall be taken within thirty (30) days after the final action of the city commission. All

final actions which have not been appealed within thirty (30) days shall not be subject [o judicial review. The city commission shall be a party in any such appeal filed in the circuit court.

Persons speaking at the public hearing in favor of the decision being appealed are not required no be made parties to such appeal.

304.2 PENALTIES

Violations of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor.

Any person who so violates this ordinance or fails to comply with any of its requirements (except violations regarding the sale or transfer of lots or parcels) shall upon conviction be fined not less than ten dollars ($10.00), but no more than five hundred dollars ($500.00) for each conviction. Each day of violation shall constitute a separate offense. In the case of lots or parcels that are sold or transferred, or contracted for sale or transfer, in violation of this ordinance, the fine shall be not less than one hundred dollars ($100.00), nor more than five hundred dollars ($500.00) for each lot or parcel involved.

ARTICLE IV
THE USE OF LAND AND STRUCTURES

400 PURPOSE

The purpose of this section of the ordinance is to classify, regulate, and restrict the use and location of buildings designed for specified uses, to regulate and determine the area of yards, courts, and other open spaces surrounding buildings, to regulate and limit the density of population, and to realize the general purposes set forth in section 202 of this ordinance. In order to accomplish this purpose, the city of Richmond is divided into zoning districts.

401 PROCEDURES

The present zoning districts were established with adoption of the original zoning ordinance and through amendments to the official zoning map that have occurred subsequently. To determine the uses that are allowed within each district, it is necessary to examine Sections 402.1 through 402.4.

401.1 CLASSIFICATION OF USES

1. Principal or primary - These are uses that are deemed to be most appropriate, and are permitted outright in a district without further review by the planning commission or the board of adjustment.

2. Conditional Uses - These are uses that may or may not be appropriate in a district, dependent upon the situation. These uses may call for restrictions on location, size, extent, and character of performance in addition to those already imposed by the ordinance, and require review and

permitting by the conditional use requiring review by the board of adjustments.

Accessory Uses - These uses are subordinate to the principal use of the land or structure, and serve purposes that are incidental to the principal use. Accessory uses do not require any further review by the planning commission or the board of adjustments.

If a specific use is not listed, the closest related use will serve as the appropriate use category as determined by the planning commission. If the planning commission cannot make this determination, then the use in question will be considered a conditional use to be reviewed by the board of adjustments.

401.2 AMENDING THE ORDINANCE

1. THE ZONING TEXT: A proposal for amendment to the text of the ordinance may originate with the city commission or the planning commission.

2. THE ZONING MAP: A proposal for amendment to the zoning map may originate with the city commission, the planning commission, any other governmental body, the owner of subject property, or by a person having written authorization from the owner of the subject property.

If a property owner wants to use his/her property in a way that is not allowed under the existing zoning classification, he/she may submit an application to the administrative official requesting a change in the zoning designation.

The steps to be followed in requesting an amendment to the ordinance are as follows:

1. File an application with the planning commission through the administrative official (Planning and Codes Office in City Hall). At the time of filing an application, a non-returnable filing fee shall be paid according to the schedule of fees, however, there shall be no filing fee for an amendment requested by any governmental agency.

2. Notice of a public hearing on the amendment shall be given by the Planning and Codes Office as follows:

   For a text amendment, notice of the time, place, and reason for holding a public hearing shall be given by three publications in the newspaper of general circulation in the county, not earlier than twenty-one (21) days or later than seven (7) days before the public hearing. The three notices shall be published on three separate dates.

   For an amendment to the official zoning map, in addition to the publication requirement above, the notice of the public hearing shall be given at least fourteen (14) days (by an individual) , or thirty (30) days (by a governmental body) in advance of the hearing to the owner(s) of every parcel of property adjoining the property, the classification of which is proposed to be changed. This notice shall be sent by first class mail, with certification by the planning commission secretary (or other officer) that the notice was mailed to all property owners. It is the duty of the person (s) proposing the amendment to furnish the planning commission with correct names and addresses of all owners of adjoining property. (Property situated directly across the street from the property requesting rezoning shall be considered to be contiguous.) Records maintained by the property

valuation administrator may be relied upon to determine the identity and address of said owner(s). In the event such property is in condominium or cooperative forms of ownership, then the person notified by mail shall be the president or chairman of the owner group which administers the property commonly owned by the condominium or cooperative, owners.

3. **PLANNING COMMISSION REVIEW:** Upon the filing of an application for an amendment to the zoning text or map, the planning commission shall study and review the application as provided in this ordinance and the bylaws of the planning commission. The planning commission may require the submission of additional information. After notice of the public hearing has been duly given, the planning commission shall hold a public hearing on the proposed amendment.

After voting to recommend that an application for amendment to the text of this ordinance be granted or denied, the planning commission shall forward its recommendations in writing to the city commission.

If the application is for an amendment to the official zoning map, the planning commission must find the amendment to be in agreement with the adopted comprehensive plan, or, in the absence of such a finding, it must find:

1. That the existing zoning classification given to the property is inappropriate and that the proposed zoning classification is appropriate, or-

2. That there have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan and which have substantially altered the basic character of such area.

In its deliberations, the planning commission may require the submission of a development plan. If a development plan is approved as part of the zoning map amendment, a certificate of land use restriction must be filed.

The planning commission shall make a finding of fact which shall be recorded in the minutes and records of the planning commission. After voting to recommend that an application for amendment to the official zoning map be granted or denied, the planning commission shall forward its findings of fact and recommendation in writing no the city commission. A tie vote shall be subject to further consideration by the planning commission for a period not to exceed thirty (30) days, an the end of which if the tie has not been broken, the application shall be forwarded to the city commission without a recommendation of approval or disapproval. When action has been taken on an application to amend the zoning map, no other application for rezoning that same piece of property will be considered until six (6) months has passed.

ACTION BY THE CITY COMMISSION: The city commission shall not act upon a proposed amendment to the text of this ordinance until it shall have received the written recommendation thereon from the planning commission. It shall take a majority vote of the entire city

commission to override the recommendation of the planning commission.

The city commission shall not act upon a proposed amendment to the official zoning map until it shall have received the written findings of fact and recommendation thereon from the planning commission. If the planning commission denied the requested amendment, before the city commission can approve such amendment, it must take a majority vote of the membership of city commissioners to override the recommendations of the planning commission.

401.3 ANNEXING LAND INT0 THE CITY

This section describes the process for annexing land into the corporate limits of the City of Richmond. A landowner desiring to annex property into the city shall meet the following requirements :

1. Submit a written proposal containing a legal description and plat of the land in question. The land must be adjacent or contiguous to the city limits, and must be either urban in character or suitable (without unreasonable delay) for urban development by reason of population density, commercial, industrial, institutional, governmental, or subdivision use. The land mush not include part of another incorporated city.

2. Upon receipt of the proposal for voluntary annexation, the Director of Codes and Planning will acquire a written determination from the City Manager and Superintendent of the Richmond water, Gas, and Sewerage Works, as to the city's capability to provide

the usual municipal services (if not otherwise provided) including, but not limited to, water, gas, sewerage, sanitation, and fire and police protection.

3. Upon affirmative determination that the city can provide the usual city services, the Director of Codes and Planning shall refer the matter to the city Commission to consider whether or not it is desirable to annex the property into the city.

4. Upon passage of the ordinance stating the city's intention to annex the property, the Planning Commission shall then hold a public hearing at the next regular meeting (following procedures spelled out in Section 401.2) for the purpose of recommending the zone or zones which should apply to the property. Upon hearing, the Planning Commission's recommendations shall be forwarded to the City Commission to be included in the ordinance annexing the property.

5. Upon receipt of the recommendation from the Planning Commission, the City Commission shall then take action on the ordinance to annex and zone the property. The ordinance to annex the property shall include instructions to the codes and Planning Directory for amending the official Zoning Map for the City of Richmond in conformity with the annexation ordinance.

6. Within sixty (60) days after passage of the annexation ordinance, the Director of Codes and Planning shall record in the office of the Madison County clerk, the Secretary of State, and the Department of Local Government in Frankfort : a) an accurate map of the annexed land, b) a metes and bounds description, and c) a certified copy of the annexation ordinance. The Director

of Codes and Planning also shall provide the Madison County Clerk with a map of the annexed land clearly delineating the boundaries of the area affected, along with a list of the names and addresses of those property owners and/or registered voters who reside in the area.

402 ZONING DISTRICTS

The ordinance recognizes five major types of zoning districts: 1) residential, 2) business (commercial), 3) industrial, 4) public/semi-public, and 5) agricultural. These districts may in turn be subdivided into subtypes, such as single-family residential, multi-family residential, neighborhood business, etc. The regulations that are applicable to a particular zone (R-IA, B-3, etc.) are applicable throughout those zones, wherever they may be located in the city.

402.1 RESIDENTIAL DISTRICTS

Residential districts are established to provide suitable sites and surroundin0gs for housing. The ordinance recognizes that there should be a diversity of settings in order to meet individual housing preferences.

1. R-1LOW/MEDIUM DENSITY RESIDENTIAL DISTRICTS - These residential districts are designed to provide for neighborhoods of single-family detached residences and related uses, and to exclude uses that are not compatible with residential use.

    a. R-1A- Low density, not exceeding 3.6 dwellings per gross acre.
    b. R-IB- Medium density, not exceeding 4.6 dwellings per gross acre.

c. R-1c- Medium density, not exceeding 5.1 dwellings per gross acre.

2. R-2 TWO-FAMILY RESIDENTIAL (DUPLEX) DISTRICTS - This district is designed to establish neighborhoods of single-family and two-family homes free from other uses not compatible to residents of the area. The density shall not exceed 5.8 dwelling units per gross acre.

3. R-3HIGH-DENSITY RESIDENTIAL DISTRICTS - This district is designed to establish, areas where multi-family housing units, at higher densities, are allowed, along with certain related uses that are of particular convenience to the residents. The density shall not exceed 14.6 dwelling units per gross acre.

4. MP MOBILE HOME PARK DISTRICTS - This district is designed to encourage the development of mobile home parks in a well-planned environment. The minimum site area shall be ten (10) acres, and the maximum allowable density is eleven (11) units per gross acre. Mobile home parks shall comply with state regulations for Kentucky Mobile Home and Recreational vehicle Parks as described in K.R.S. Chapters 219.310 to 219.410.

402.11 MOBILE HOME PARK STANDARDS - Mobile home parks shall be located only in the MP District and shall be developed according to the following standards-

a. It will be designed, constructed, operated, and maintained so as to be harmonious and appropriate in appearance with the existing or

intended character of the general vicinity, and its use will not change the essential character of the area.

b. It will not be hazardous or detrimental to existing or future neighboring uses.

c. It will be served adequately by essential public facilities and services such as highways, streets, police and fire protection, drainage, waste disposal, and schools.

d. It will be consistent with the intent and purpose of this ordinance and the Comprehensive Plan.

e. It will have vehicular approaches to the property which shall be designed so as not to create any interference with traffic on surrounding public streets or roads.

f. It will not result in the destruction, loss, or damage of natural, scenic, or historic features of major importance.

APPLICATIONS - Applications for a permit to construct or alter a mobile home park shall be made in writing to the appropriate state agency and the city's Department of Planning and Codes, and shall contain a complete plan, drawn to scale, submitted in triplicate and showing the following items:

a. The name and address of the applicant.
b. The name and location of the park.

c. The dimensions and topography of the site.
d. The number and size of all mobile home lots.
e. The area of each lot intended for the mobile home with setback lines shown.

f. A detailed drawing of the foundation for placement of mobile home within the stand

g. Location and width of roadways, driveways, and walkways.

h. Number, location, and size of all off-street parking spaces.

I. The location of all utilities with size of lines (as needed), detailed drawings of water supply (if other than public), and detailed drawings (with specifications) of sewage disposal facilities. All sewage and waste matter shall be disposed of into a public sewerage system. The permit holder is responsible for storage and disposal of solid waste. The storage, collection, and disposal of solid waste shall be handled in such a way as not to create any health hazards.

j. Individual mobile homes located within the park shall have a minimum floor area of seven hundred and twenty (720) square feet.

k. A separate floor plan of all buildings and other improvements to be constructed.

l. Size ana location of any playground area if being provided.

m. Evidence of compliance with the Comprehensive Plan and this ordinance.

n. Payment of required fees.
o. Such other information as the Planning Commission might require.

LOCATION AND GENERAL LAYOUT:

(1) The mobile home park shall be located on a well-drained area not subject to recurring flooding, and the premises shall be properly graded for drainage.

(2) The mobile home park shall abut a collector or arterial street.

(3) Each mobile home/lot shall be numbered and displayed in some systematic order.

(4) Each mobile home lot shall be a minimum of 4,000 square feet in area.

(5) Mobile homes shall be separated from each other and other structures by a minimum of fifteen (15) ft.

(6) All mobile homes shall be located at least twenty-five (25) feet from any street right-of-way, and at least twenty (20) feet from any other park boundary.

(7) Each mobile home shall be set back from a park street or common parking area a minimum distance of twenty (20) feet.

(8) The park shall provide a recreational area which Shall be easily accessible to all park residents and free of traffic hazards. A minimum of one hundred and fifty (150) square feet of usable recreational space shall be provided for each mobile home park lot.

(9) All lots shall abut upon a park street. The minimum width of a two-way park street shall be twenty-seven (27) feet, and fourteen (14) feet for a one-way park street. Additional street width may be required where on-street parking is to be allowed.

(10) Park streets, driveways, and walkways shall be paved according to city specifications, maintained in good condition, have good natural drainage, and be relatively free of dust.

(11) The area of the mobile home stand shall be improved to provide an adequate concrete foundation for the placement of the mobile home. The mobile home stand shall not heave, shift, or settle unevenly under the weight of the mobile home due to frost action, inadequate drainage, vibration, or other forces acting on the super-structure. All mobile homes shall be equipped with tie-downs as recommended by the Mobile Home Manufacturers's Association.

(12) A dwelling/office for caretaker or manager is allowable provided it meets the applicable sections of this ordinance.

PERMITS AND OCCUPANCY - The Administrative official shall not issue a building permit until written authorization is received from the Planning Commission. In addition, the applicant cannot begin construction until a valid construction permit has been obtained from the appropriate state agency.

The Administrative Official shall issue a certificate of occupancy only after he has determined that the mobile home park has been prepared according to all applicable regulations. A certificate of occupancy shall be issued on each mobile home. The applicant must also obtain a valid permit to operate from the appropriate state agency.

Any mobile home park presently holding a valid construction or operating permit on the effective date of this regulation which does fully meet these design and construction requirements may continue to operate so long as the facilities in the park are capable of being maintained in a safe and sanitary manner.

OTHER REQUIREMENTS:

Regulations pertaining to uses and dimensional requirements, parking, and supplementary requirements, not covered in this section, are covered in other appropriate sections of the ordinance.

5. PUD PLANNED UNIT DEVELOPMENT - The PUD district is established to allow flexibility in residential design and development. It is a zoning concept that may be applied to any residential district. The primary use in

the district is residential, but there is an allowance for neighborhood commercial activity. The minimum site area requirement is five (5) acres, and the maximum allowable density is 16.4 dwelling units per gross acre.

OBJECTIVE

a. To provide a maximum of living environments by allowing a variety of housing and building types and permitting an increased density (if applicable), reductions in lot dimensions, yards, and area requirements.

b. To provide a more useful pattern of open space and recreation areas and, if permitted as part of the project, more convenience in the location of selected commercial uses and services.

c. To allow a development pattern which preserves and utilizes natural topographic and geologic features, scenic vistas, trees and other vegetation, and prevents the disruption of natural drainage patterns.

d. To encourage a more efficient use of land chan generally is achieved through conventional development, resulting in substantial savings through shorter utility lines and streets.

e. To create a development pattern in harmony with land use density, transportation facilities, and the community facilities objectives of the Comprehensive Plan.

The City is prepared to accept a greater population density in undeveloped areas than that reflected by present

zoning, provided the developer can demonstrate that any increment of public cost clearly attributable to increased densities will be compensated for by the private amenities and public benefits to be achieved by the development plan:

PROVISIONS - Because of the special characteristics of planned unit developments, special provisions are required. Whenever there is a conflict or difference between the provisions of this section of the ordinance and other sections of the ordinance, the provisions of this section shall prevail for planned unit developments. Subjects not covered by this section shall be governed by the respective provisions found elsewhere in this ordinance.

a. Compatible residential, commercial (B-I district), public, and semi-public uses may be combined, provided the proposed location of the commercial activities will not adversely affect adjacent property, or the health, safety, and general welfare of the public. The Planning Commission may place limits on the amount of commercial development, and shall not allow the development of commercial areas until completion of the residential areas. When commercial use is allowed, the developer will submit a market analysis.

b. Lot area per dwelling unit may be reduced to not less than nineteen hundred (1,900) square feet, with a minimum lot width of twenty (20) feet and setback lines of twenty-five (25) feet in the front and twenty (20) feet in the rear.

c. Spacing between the exterior walls of side buildings shall be at least fifteen (15) feet.

d. Notwithstanding the other provisions of [his ordinance, every lot abutting the perimeter of the planned unit development site shall maintain all yard requirements specified by the applicable zoning district.

e. Every property developed under the planned unit development approach should be designed to abut upon common open space or similar areas. A clustering of dwellings is encouraged. Where townhouses are being used, there shall be no more than eight (8) individual units in a contiguous cluster.

f. The project land shall be owned, leased, or controlled either by a single person or corporation. Such ownership may be public or private.

g. A minimum of twenty (20) percent of the land developed in any planned unit development project shall be reserved for common open space and recreational facilities to be provided for the residents or users of the area being developed, as determined by the planning commission.

h. Underground utilities are recommended within the limits of the PUD (if practical). Appurtenances to these systems which can be effectively screened may be exempted from this requirement if the Planning Commission finds that such exemption will not violate the intent or character of the proposed development project.

I. The gross area of a tract of land to be developed shall be a minimum of five (5) acres, provided, however, that smaller parcels may be considered on the basis of their potential to satisfy the stated objectives of PUDs.

PROCEDURE

All proposed PUDs shall follow the procedures for subdividing land. Since the PUD involves zoning, the Planning Commission shall hold a public hearing following consideration, of the preliminary plat in order to recommend the necessary zoning change. If approval is given to the preliminary plat, and the zoning request, the developer may proceed with activities leading to final plat approval, upon final approval by the city Commission, the Official Zoning Map shall be changed for the area involved with the notation "PUD" given to that area.

A building permit and certificate of occupancy shall be required for each building in accordance with this ordinance. Approval of a PUD shall expire if no substantial work on the site has begun within one (1) year of original approval of the preliminary plat, and if the project is abandoned for more than twelve (12) months. Abandonment shall be deemed to have occurred when no improvements have been made pursuant to the approved plat. All approved PUD plats shall be recorded in the county Clerk's office.

USES ALLOWED, DIMENSIONAL REQUIREMENTS PARKING, AND SIGNS - The following cable provides information on the uses that are allowed in residential districts, along with dimensional, parking, and sign requirements.[Foldouts]

USES ALLOWED:	R-1A	R-1B	R-1C	R-2	R-3	MP	PUD(4)
Single-family dwelling (does not include mobile homes)	P	P	P	P	P		P
Two-family dwellings				P	P		P
Multi-family dwellings					P		P
Mobile homes						P	
Rooming/boarding homes				C	P		
Tourist homes (includes bed and breakfast homestays)				C	P		
Dormitories					C		
Fraternity/sorority houses				C	C		
Day-care and nursery facilities				C	C	C	
Home occupations (1)	C	C	C	C	C	C	C
Greenhouses, gardens, horticultural activities (non-commercial)	A	A	A	A	A	A	A
Garages, carports, storage buildings (2)	A	A	A	A	A	A	A
Private swimming pools	A	A	A	A	A	A	A
Satellite T.V. dishes (3)	A	A	A	A	A	A	A
Churches and related church uses	C	C	C	P	P		
Civic, charitable organizations	C	C	C	P	P		
Parks, playgrounds, playlots	C	C	C	C	C		P
Golf courses	C	C	C	C	C		P
Schools and related school uses	C	C	C	C	C		
Libraries				C	C		
Barber/beauty shops					C	C	
Laundromat, snack bar, newsstand				C	C		
Residential care facility	P	P	P	P	P		P

Notes: Blank spaces indicate that the use is not allowed in that district. In addition, uses not listed are not allowed.

(1) Home occupations must meet the requirements spelled out in definitions.

(2) Storage buildings and related structures shall be limited to two (2) per lot. They must be located in the rear or side yards, and set back at least ten (10) feet from the property lines. Storage buildings shall not exceed a total of 200 square feet in size.

(3) TV satellite dishes shall be located in the rear yards, set back from the property lines at least 10 ft., and shall not exceed 20 ft. in height.

(4) PUDs may include limited B-1 (neighborhood) commercial uses.

DIMENSIONAL REQUIREMENTS:

(Bldg. Stories)	R-1A 1 to 1 1/2	R-1A 2 to 2 1/2	R-1B 1 to 1 1/2	R-1B 2 to 2 1/2	R-1C 1 to 1 1/2	R-1C 2 to 2 1/2	R-2 1 to 1 1/2	R-2 2 to 2 1/2	R-3 1 to 1 1/2	R-3 2 to 6	MP	PUD
Minimum Lot Width (ft.)	75		60		50		50		50		40	---
Minimum Building Site (sq. ft.)[1]	12,000		9,500		8,500		7,500		6,500*		4,000	1,900**
Maximum Building Height (sq. ft.)	30		30		30		30		65		20	35
Minimum Front Yard (ft.)[2]	25		25		25		25		25		25 ~~20~~	25
Minimum Rear Yard (ft.)***	35 - 45		20 - 25		15 - 20		20 - 30		~~30~~ 30		15 ~~10~~	20
Minimum Side Yard (ft.)***	10		7		5		5		5		10 ~~8~~	0
Least Side (ft.)	10 --- 10		7 --- 8		5 --- 6		5 --- 6		5 --- 6		10	0
Sum of Both Sides	20 --- 22		15 --- 18		12 --- 14		12 --- 14		12 --- 14		20	0

* For each additional apt. unit, an additional 2,800 sq. ft. of building area is needed.

** The minimum building site area for a PUD project is 5 acres.

*** Requirements for additional yard width with multi-story buildings. For buildings above 2 1/2 stories, rear and side yard requirements shall be increased by 5 feet for each floor.

[1] For corner lots in all residential developments, the minimum building site for corner lots shall be 10% greater than other lots.

[2] For the purpose of determining front yard requirements, the front of the building is that side of the building that includes the main entrance(s) as determined by the Administrative Official. Drawings such as floor plans and elevations may be required in making this determination.

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PARKING:

	R-1A	R-1B	R-1C	R-2	R-3	MP	PUD
Off Street Spaces Per D.U.	2	2	2	2	-	2	-
Off-Street Spaces Per Bedroom	-	-	-	-	1½	-	1

Churches/Related - 1/5 seats; Parks/related - 1/800 sq. ft.; Schools/related - 1 per employee and 1 per 10 students; Other - 1 per 200 sq. ft. floor space. For additional requirements, see Section 403.3.

SIGNS: Signs advertising sale, rental, etc. of property upon which sign located (6 sq. ft.); signs denoting name and address (2 sq. ft.); professional name plates, home occupations (4 sq. ft); sign denoting name of subdivision (12 sq. ft.); temporary signs related to development of a residential area (12 sq. ft.). For additional information, refer to Section 406.77.

STORAGE: Any material stored outdoors must be stored in an enclosed space, or be screened from adjacent property.

NOTE: See Section 407.1 for additional requirements of residential areas.

402.2 BUSINESS DISTRICTS

Business districts are established to provide suitable sites and surroundings for a variety of commercial activities. The ordinance recognizes that the different types of commercial areas are best suited for certain land and structural uses. Five different types of commercial zoning districts are identified:

1. B-1 NEIGHBORHOOD BUSINESS DISTRICT - The purpose of the B-1 District is to encourage the establishment of areas for convenient type business uses designed to meet the daily needs of residents in immediate neighborhoods. Such districts shall be strategically located with access to a collector street.

2. B-2 CENTRAL BUSINESS DISTRICT - The purpose of the B-2 (downtown) District is to accommodate and encourage further expansion and renewal in the historical business core area of the city. A variety of business, governmental, residential, and other related uses are provided in an effort to provide the mix of activities necessary to establish a truly urban character.

3. B-3 HIGHWAY BUSINESS DISTRICT - The purpose of the B-3 District is to encourage the establishment of areas for highway business uses only. This district is specifically designed to serve the motoring public. B-3 districts are generally located at intersections or interchange areas along major arterials or interstate highways. Strip development is not encouraged.

4. B-4 PLANNED SHOPPING CENTER DISTRICT - The purpose of the B-4 District is to encourage the establishment of large, clustered, planned areas for business use. The

ordinance recognizes different levels of shopping centers designed to meet the needs of variable sized markets:

Neighborhood Shopping Center - This shopping center provides for neighborhood convenience goods. Neighborhood centers shall be located at the intersection of two collector or major arterial streets, and have access to both streets. The minimum area required for a neighborhood shopping center shall be five (5) acres.

Community Shopping Center - This center provides for shopping goods on a community-wide basis. These centers shall be located at the intersection of two major arterial streets and have access to both streets. The minimum area required for a community shopping center is fifteen (15) acres.

Regional Shopping Center - This center provides shopping goods for the entire community plus areas beyond the city limits. A regional shopping center shall be located at the intersection of major arterials or expressways.

The following minimum design standards shall be met in the development of shopping centers:

1. The shopping center shall provide adequate access. Entrances and exits shall be located so as not to increase congestion at intersections.

2. The shopping center shall provide internal traffic circulation and control devices so as to maximize auto and pedestrian safety.

3. The shopping center shall submit a development plan which is subject to approval by the TAC.

4. The plan shall provide for a center consisting of one or more groups of establishments in buildings of integrated and harmonious design, together with adequate and properly arranged parking, in an attractive setting that fits harmoniously into adjoining or surrounding properties.

5. The applicant for the proposed shopping center shall show the need for the facilities and services and any other evidence the Planning Commission may require.

[Foldouts]

6. The Planning Commission must be satisfied that the developer of the proposed center is financially able to carry out the project, that he will start construction within one (1) year of approval, and that he intends to complete the project within a reasonable time (as the commission determines).

7. The plan for the shopping center shall be in keeping with the city's Comprehensive Plan.

8. No building(s) shall cover more than twenty-five (25) percent of the total area of the lot or tract.

The owner or owners of the land upon which the center is being developed shall submit a development plan to the Planning Commission for their review. If the proposed center meets the standards set forth in this section, the Planning Commission shall approve the development plan.

5. P-1 PROFESSIONAL OFFICE DISTRICT - The purpose of the P-1 District is to encourage the establishment of groupings of professional, research, executive, administrative, accounting, clerical, and similar uses. Research uses shall not involve heavy testing operations of any kind. These districts shall be located on collector or arterial streets. The P-1 District is also designed to act as a buffer between other more intensive commercial uses and higher density residential uses.

USES ALLOWED, DIMENSIONAL REQUIREMENTS, PARKING AND SIGNS - The following table provides information on the uses allowed, dimensional requirements, parking, and signs:

USES ALLOWED

	BUSINESS DISTRICTS						
	B-1	B-2	B-3	B-4 NH	B-4 CNTY	B-4 REGL	P-1
A. UTILITIES, TRANSPORTATION & COMMUNICATIONS							
1. Trucking/Movers			P	P			
2. Post Office	P	P	P	P	P	P	
3. Telephone Co.			P	P			
4. Telegraph Office			P	P			
5. Radio & T.V. Stations			P	P			
6. Utility Companies			P	P			C
7. Bus Lines			P	P			
8. Taxicabs			P	P			
9. Air Cargo Service			P	P			

USES ALLOWED	BUSINESS DISTRICTS						
	B-1	B-2	B-3	B-4 NH	B-4 CMTY	B-4 REGL	P-1
B. WHOLESALE TRADE							
1. Durable (motor vehicles, furniture, hardware, etc.)		P	P				
2. Non-Durable (paper, food, etc.)		P	P				
C. RETAIL TRADE							
1. Bldg. materials, hardware, home improvements, etc. C	P	P	P	P	P		
2. Farm supplies/equipment		P	P		P	P	
3. General merchandise (department stores, variety stores, etc.)		P	P	P	P	P	
4. Food stores (grocery, bakery)	P	P	P	P	P	P	
5. Vehicle dealers (autos, boats, trucks, motorcycles)		P	P		P	P	
6. Trailers, mobile homes, RVs			P				
7. Apparel & accessories (clothing, shoes, bridal, etc.)	P	P	P	P	P	P	
8. Furniture, furnishings, and appliances		P	P		P	P	
9. Office supplies & equipment		P	P		P	P	
10. Eating and drinking places* (restaurants, cafes, cafeterias)	P	P	P	P	P	P	C
11. Bars, nightclubs, lounges, etc.*		P	P	P	P	P	
12. Liquor stores*		P	P	P	P	P	
13. Drugstores (pharmacies)	P	P	P	P	P	P	
14. Used merchandise, antiques, pawn shops		P	P				
15. Sporting goods, gun shops	P	P	P	P	P	P	
16 Bookstores, newsstands	P	P	P	P	P	P	C
17. Jewelry	P	P	P	P	P	P	
18. Auto parts, tire sales		P	P	P	P	P	
19. Florists	P	P	P	P	P	P	
20. Pet shops	C	C	C		C	C	
21. Gift shops, coins, arts & crafts	P	P	P	P	P	P	
22. Bicycle shops	P	P	P	P	P	P	
23. Monument sales		P	P				
24. Glass sales	P	P					
25. Ice	P	P					
26. Musical equipment/supplies		P	P	P	P	P	P
27. Commercial nursery P	P	P	P	P	P		
D. FINANCE, INSURANCE & REAL ESTATE							
1. Banks	P	P	P	P	P	P	P
2. Credit, savings/loans	P	P	P	P	P	P	P
3. Security/commodity brokers		P	P	P	P	P	P
4. Insurance		P	P	P	P	P	P
5. Real Estate	P	P	P	P	P	P	
6. Investment offices	P	P	P	P	P	P	
E. PERSONAL SERVICES							
1. Laundry, cleaners		C	P	P	P	P	
2. Photo studios		P	P	P	P	P	P
3. Beauty/barber shops		P	P	P	P	P	C
4. Shoe repair P		P	P	P	P	P	
5. Funeral services/morgue		C	P	C			C
6. Travel services		P	P	P	P	P	P
7. Health club, spa, etc.		C	P	P	P	P	

USES ALLOWED	BUSINESS DISTRICTS						
				B-4			
	B-1	B-2	B-3	NH	CNTY	REGL	P-1
F. BUSINESS SERVICES							
1. Advertising/public relations		P	P	P		P	P
2. Credit bureau		P	P	P		P	P
3. Steno/typing, answering	C	P	P	P	P	P	P
4. Printing, copying	C	P	P	P	P	P	
5. Janitorial/maintenance		P	P				
6. Computers, data processing		P	P	P	P	P	P
7. Rentals: merchandise	C	C	P	C	C	C	
equipment	C	P	C	C	C		
8. Research, testing		P	P				P
9. Mini warehouses	C	C	P				
G. AUTO REPAIR, SERVICES, GARAGES	C	P	P	C	C	C	
H. MISCELLANEOUS REPAIR							
1. Electrical, electronic	C	P	P	P	P	P	
2. Watches, clocks, jewelry	P	P	P	P	P	P	
3. Reupholstery		P	P	P	P	P	
4. Air conditioning, machines, etc.	C	P	P	P	P	P	
I. ~~AMUSEMENT~~ RECREATION							
1. Theaters		P	P	P	P	P	
2. Bowling/billiards		P	P	P	P	P	
3. Skating			P	P			
4. Riding stables			C				
5. Other	C	C	C	C	C	C	
J. HEALTH SERVICES							
1. Physicians, dentists	P	P	P	P	P	P	P
2. Others (chiropractors, optometrists, etc.)	P	P	P	P	P	P	P
3. Hospitals, clinics	P	P					
4. Medical, dental labs	P	P	P	P	P	P	P
5. Nursing, personal care	C	C	P	P			
K. LEGAL SERVICES	P	P	P	P	P	P	P
L. EDUCATIONAL (includes business, professional)			P	P			C
Dance studios, acting, music	C	P	P	P			
M. SOCIAL SERVICES							
1. Welfare			P	P			
2. Nursing facility		C	P	P			
3. Treatment centers		P	P				C
4. Daycare centers[1]	C	C	C	C	C	C	C
N. ARCHITECTS, ENGINEERS, ETC.	P	P	P	P	P	P	P
O. CONTRACT CONSTRUCTION		C	C				
P. BUSINESS, CIVIC, PROF. CLUBS	C	P	P	P	P	P	C
Q. VETERINARY OFFICES			C				
R. GOVERNMENT SERVICES (city-county offices, fire/police, schools, courts, auditoriums, libraries, etc.)	P	P	P	P	P	P	C

[1] Special attention shall be given to safety concerns. No daycare play area shall be located adjacent to a street.

USES ALLOWED	BUSINESS DISTRICTS						
				B-4			
	B-1	B-2	B-3	NH	CMTY	REGL	P-1
S. CHURCHES	P	P	P	P	P	P	P
T. RESIDENCES							
1. Multi-family (loft units)**		P	C				
2. Single-family loft units **		P	P	C	C	C	P
3. Motels		P	P		C	C	
4. Hotels		P					
5. Fraternities/sororities	C						

**Loft units must provide off-street parking.

DIMENSIONAL REQUIREMENTS	B-1	B-2	B-3	B-4 NH	B-4 CMTY	B-4 REGL	P-1
Minimum Building Site	no limit	no limit	no limit	5 acres	15 acres	30 acres	5000 sq. ft.
Minimum Building Height (ft.)	35	no limit	no limit	no limit	no limit	no limit	no limit
Minimum Lot Width	25	25	25	200	200	200	40
Minimum Front Yard (ft.)	25	none	25	25	30	30	30
Minimum Rear Yard (ft.)	10	none	10	10	15	15	20
Minimum Side Yard (ft.)	none	none	none	20	20	25	20

PARKING:
Loft dwellings: 1 1/2 per bedroom
Auto service stations: 1/2 pumps + 1/service bay
Hotels, motels: 1/sleeping room + 1/2 employees
Funeral homes/related: 1/100 sq. ft. floor area
Retail stores, banks, eating/drinking places, medical/dental clinics, etc.: 1/200 sq. ft. floor area
Public/professional offices: 1/400 sq. ft. floor area
All other commercial uses: 1/300 sq. ft. floor area
For additional requirements, see Section 403.

SIGNS:
Wall Signs: 1/street fronted, max. of 4 sq. ft. sign area/linear ft. of building, total not to exceed 720 sq. ft. Name Plates: 1/business, max. 4 sq. ft. Freestanding Signs: 1/individual building, max. height 40 ft., max. surface area 200 sq. ft.. Advertising Sale/Lease of Property: 1/lot, max. 12 sq. ft. Mobile Signs: 1/business or parcel of property, max. 50 sq. ft.
For additional requirements, see Section 406.

402.3 INDUSTRIAL DISTRICTS

Industrial Districts are established to meet the purposes set forth in Sections 561-563, inclusive.

402.31 LIGHT INDUSTRIAL DISTRICT (I-1) - The purpose of the I-1 District is to encourage the development of manufacturing and wholesale business establishments which are clean, quiet, and free of hazardous or objectionable elements such as noise, odor, dust, smoke, or glare; operate entirely within enclosed structures and generate little industrial traffic. Research activities are encouraged. This district is further designed to act as a transitional use between heavy industrial uses and other less intense business and residential uses.

402.32 HEAVY INDUSTRIAL DISTRICT (I-2) - The purpose of the I-2 District is to encourage the development of major manufacturing, processing, warehousing, and major research and testing operations. These activities require extensive community facilities, and reasonable access to arterial highways; they may have extensive open storage and service areas, generate heavy traffic but shall be prohibited if they create nuisances beyond the limitations set up by the Planning Commission.

402.33 USES

MANUFACTURE/STORAGE	I-1	I-2
Food and Related	C	P
Textile Products		P
Wearing Apparel (leather, fabrics, etc.)	P	P
Lumber and Wood Products	P	
Furniture and Fixtures	C	P
Storage Structures, to include tractor trailers and similar structures	P	P
Paper and Related		P
Printing, Publishing	P	
Transportation Equipment	C	P
Chemicals and Related		P
Petroleum		P
Rubber, Plastics		P
Stone, Gravel, Clay		P
Fertilizers		P
Glass	C	P
Primary Metal Manufacturing		P
Fabricated Metals	C	P
Electronics	C	P
Instruments, optical goods, watches, etc.	P	
Pharmaceutical	P	
Toys, Novelties	P	
Beverages, bottling	C	
Signs, electrical	P	
Warehouses (including mini-warehouses)	P	P
Sewage Treatment, Water Treatment, Generating Plants	C	C
Other related uses deemed appropriate by the Planning Commission	C	C
Stockyards, livestock auction facilities	C	C
Dancing/after hours establishments		C

402.34 DIMENSIONAL REQUIREMENTS

	I-1	I-2
Heights (ft.)	65	65
Minimum Lot Size (sq. ft.)	10,000	10,000
Lot Width	50	50
Minimum Yard Requirements		
Front	25	35
Rear	10	15
Side	10	15

402.35 SIGNS - Wall signs: 1/street frontage, max. of 4 sq. ft. sign area/linear ft. of bldg.; total not to exceed 720 sq. ft.

Free standing signs: 1/individual bldg., max. height 40 ft., max. sign area 200 sq. ft.; Advertising sale or lease of property, 1/lot, max. 12 sq. ft.; mobile signs, 1/industry, max. sign area 50 sq. ft.

402.36 PARKING - 1 space/400 sq. ft. of gross floor area (production)

For supplementary regulations, see Section 403.3.

402.4 PUBLIC & SEMI-PUBLIC DISTRICT (PSP)

Public utilities operating under the jurisdiction of the public service commission or the department of vehicle regulations or federal power commission, any municipally owned electric system and common carriers by rail shall not be required to receive the approval of the planning unit for the location or relocation of any of their service facilities. They shall give notice to the planning commission of any hearing which affects locations or relocations of service facilities within the planning commission's jurisdiction. Non-service facilities must be in accordance with these regulations.

Any proposal for acquisition or disposition of land for public facilities, or changes in the character, location or extent of structures or land for public facilities, excluding state and federal highway and public utilities and common carriers by rail, shall be referred to the planning commission to be reviewed in light of its agreement with the comprehensive plan, and the commission shall within sixty (60) days from the date of its receipt, review the project and advise the referring body whether the project is in accordance with the comprehensive plan. If it disapproves of the project it shall state the reasons for disapproval in writing and make suggestions for changes which will, in its opinion, better accomplish the objectives of the

plan. No permit required for construction or occupancy of such public facilities shall be issued until the expiration of a sixty (60) day period or until the planning commission issues its report, whichever occurs first.

Nothing in these regulations shall impair the sovereignty of the Commonwealth of Kentucky over its political jurisdictions. Any proposal affecting land use by any department commission, board, authority, agency, or instrumentality of state government shall not require the approval of the local planning unit. However, adequate information concerning the proposals shall be furnished to the planning commission. In the case of penal institutions or correctional facilities inconsistent with or contrary to local planning regulations or the comprehensive plan, the state shall notify the planning commission and local government involved of the proposal, and shall hold a public hearing on the proposal at least ninety (90) days prior to any acquisition, construction, alteration, or leasing.

Where public/semi-public uses are adjacent to residential districts, the public/semi-public use shall meet the minimum yard requirements of the residential district if applicable.

402.5 AGRICULTURAL DISTRICT (A)

This district is established to provide for land presently in non-urban type uses (farmland, land that is vacant or idle, dispersed residential, etc.) being annexed into the city that shall remain in these non-urban uses until development is anticipated. This classification recognizes that such land has a high potential for urban-type development in the near future. Prior to the development of the property into a residential subdivision, multi-family residential complex, commercial, or industrial site, it will be necessary for the

owner(s) to apply for a zoning map amendment, requesting the appropriate zoning classification allowing that use. The minimum area required for inclusion in this district is one (1) acre.

Principle Uses Include: Agriculture (see definition of agricultural use in Article VII), dispersed single-family residences, land that is idle or vacant, recreation/open land areas, utilities, accessory structures (barns, garages, sheds, etc.). The Planning Commission may recommend other related low intensity land uses to the Board of Adjustments for their consideration as a conditional use.

403 PARKING REQUIREMENTS

403.1 GENERAL

No building or structure shall be erected, substantially altered, or its use changed unless permanently maintained off-street parking and loading spaces (if applicable) have been provided in accordance with provisions of this ordinance.

These provisions shall not apply to existing buildings or structures except where there has been a change of use. Where the new use involves additions or enlargements, additional parking spaces shall be provided as required by this ordinance.

Whenever a building or structure constructed after the effective date of this ordinance is changed or enlarged in floor area, number of employees, number of housing units, seating capacity, or otherwise, to create a need for an increase in the number of existing parking spaces, additional parking spaces shall be provided. If an existing building or structure is enlarged by fifty (50) percent or more in terms of the above

characteristics, said building or structure shall comply with the full parking requirements set forth in this ordinance.

Off-street parking shall be provided by the property owner in the B-2 District (downtown) for any multi-family dwellings being added as loft units. The requirement is one off-street parking space per bedroom, and may be met through new parking spaces, rent or lease of existing spaces, or some other arrangement.

403.2 LOCATION OF PARKING

Parking spaces for all detached residential uses shall be located on the same lot as the use which they are intended to serve.

Parking spaces for apartments, dormitories, or similar residences shall be located adjacent to the principal use. Parking spaces for commercial, industrial, or institutional uses shall be located not more than seven hundred (700) feet from the principal use. Parking lots farther than seven hundred (700) feet from the principal use may be approved by the Planning Commission.

No part of any parking space for multi-family dwelling units shall be located within ten (10) feet of the dwelling unit structure. No part of any parking area space for more than ten (10) vehicles shall be closer than twenty (20) feet to any dwelling unit, school, hospital or other institution for human care located on an adjoining lot unless separated by an acceptable screen. In no case shall any part of a parking area be closer than four (4) feet to any established street or alley right-of-way.

403.3 NUMBER OF SPACES REQUIRED

Uses	Spaces
Residential	
Single-family, two-family	2 per dwelling unit
Multi-family	1 ½ per bedroom
Boarding houses, bed/breakfast, etc.	2 per sleeping room
Mobile homes	2 per unit
Commercial	
Auto Service Stations	1 per pump + 1 per bay
Hotels, motels	1 per sleeping room + 1 per 2 employees
Funeral homes/related	1 per 100 sq. ft. floor area
Retail Stores	1 per 200 sq. ft. floor area
Banks/related	1 per 200 sq. ft. floor area
Offices, services	1 per 400 sq. ft. floor area
Eating/drinking places	1 per 200 sq. ft. floor area
All other commercial	1 per 300 sq. ft. floor area
Entertainment/Recreation	
Bowling alleys	4 per alley + 1 per 100 sq. ft. of other area.
Dance floors, skating, etc.	1 per 100 sq. ft. floor area
Sports arenas, stadiums	1 per 4 seats
Parks, recreation areas	1 per 800 sq. ft. of developed space (ballfields, etc.)
Golf course	5 per hole + 1 per 400 sq. ft. floor area in pro shop.
Public/Semi-Public	
Libraries, museums, art galleries, etc.	1 per 400 sq. ft. floor area

Uses	Spaces
Homes for Senior Citizens	1 per 2 beds
Kindergarten, day-care	2 per classroom (minimum 6)
Elementary, middle schools	2 per classroom +1 per 8 auditorium seats
High Schools	1 per 10 students + 1 per teacher/staff
Civic clubs, related	1 per 5 seats
Industrial	
Manufacturing/warehousing	1 per 400 sq. ft. floor area

403.4 PARKING LOT IMPROVEMENTS

The required number of parking and loading spaces, together with driveways, aisles, and other circulation areas, shall be improved with an acceptable impervious material to provide a durable and dust-free surface. All parking lots and loading areas shall provide for proper drainage of surface water. The owner of the property used for parking and loading shall maintain the area in good condition, without holes, and free from dust, litter, and other debris. Any parking area that is intended to be used beyond daylight hours shall be properly illuminated. Any lights used to illuminate the parking lot shall be so arranged so as to reflect light away from adjoining property.

Parked vehicles shall not be permitted to hang over a landscape buffer or interior landscaped area more than two and one-half (2 ½) feet. Curbs or wheel stops shall be provided to prevent excessive overhang.

Landscaping: In all commercial, industrial, and multi-family residential development, for any one hundred (100)

square feet of vehicular use area (or fraction thereof), five (5) square feet of landscaped area shall be provided, to include the perimeter of buildings. The minimum size for a landscaped area shall be sixty-four (64) square feet, with a least dimension of eight (8) feet. In order to encourage the required landscape areas to be properly dispersed, the following standards shall apply:

Parking Lot Area	Maximum Size of Single Landscaped Area
Under 30,000 sq. ft.	350 sq. ft.
Over 30, 000 sq. ft.	1,500 sq. ft.

The least dimension of any required area shall be eight (8) feet. The maximum distance between landscaped areas is one hundred twenty (120) feet. Landscape areas larger than above are permitted as long as the additional area is in excess of the required minimum.

A landscape plan is required which provides a minimum of one (1) tree for each two hundred fifty (250) square feet (or fraction thereof) of required landscaped area. Trees shall have a clear trunk of at least five (5) feet above the ground, and the remaining area shall be landscaped with shrubs or ground cover, not to exceed two (2) feet in height. Plants can be higher along buildings provided they do not interfere with movements in the parking lot.

All planting materials shall be living plants (not artificial) and suitable for the conditions of the site. Plant materials shall conform to the standards of the American Association of Nurserymen, and shall have passed any inspections required under state regulations. All landscaping materials shall be installed according co

accepted good planting and construction procedures, use should be made of any existing on-site plants as much as possible. See the Richmond Planting Manual for guidelines in use of plant materials. The landscape plan must be approved by the Landscape Review Committee.

The property owner shall be responsible for the continued maintenance and replacement of all landscaping materials.

Landscaped areas shall be kept free of refuse and debris. Any dead materials shall be replaced during the following planting season.

403.5 DIMENSIONAL REQUIREMENTS & ACCESS

A parking space shall provide a minimum rectangular area of one hundred eighty (180) to two hundred (200) square feet, dependent upon the angular orientation of the parking space:

	Length (ft.)	Width (ft.)
Parallel parking	23	9
90 degree parking	20	9
60 degree parking	19	10
45 degree parking	19	12

These dimensions are exclusive of driveways, aisles, and other circulation areas. Circulation areas within the parking lot, as well as entrances/exits, shall have a minimum width of twenty-four (24) feet for two-way traffic and fourteen (14)" feet for one-way traffic. Parking lots shall be clearly marked with painted spaces, directional arrows, stop signs, etc. needed to insure orderly and safe traffic flow.

All parking lots shall be designed in such a way that any vehicle entering or leaving the parking area from the street

shall be traveling in a forward motion. Access points shall be located so as to be clearly visible for a reasonable distance to any pedestrian or motorist approaching the access point from the street.

404 LANDSCAPE REQUIREMENTS

404.1 PURPOSE

It is the intent of this section of the ordinance to provide for landscaping techniques that will improve the aesthetic and functional quality of new development, and minimize the friction between different urban land uses.

This section governs the use of trees, shrubs, plants, ground covers, walls, fences, and earth mounds to achieve the following objectives: 1) retard erosion, 2) channel vehicular and pedestrian circulation, 3) protect surrounding property values, 4) reduce the effects of air, odor, visual, and noise pollution, 5) reduce glare from artificial lighting, 6) separate different land use activities, and 7) screen off unsightly activities.

404.2 PROCEDURES

Responsibility of Developer - The landscape buffer easements set forth in this ordinance shall be provided as a condition of development by the owner or developer of the property which creates the different situation.

An owner securing a change in zone which creates a different situation shall be deemed the one who creates such situation and shall immediately provide the buffer areas as a condition of the zone change. If the different situation already exists or is created by a general zone change not sponsored by the

property owner, the buffer easement shall be provided as a condition of the approval of any subdivision of the affected, land.

Landscape Review Committee - The City Commission has established a Landscape Review Committee (appointed) for the purpose of insuring compliance with this section of the ordinance. Before a development plan is approved, such plans shall be reviewed by the committee for compliance with this section of the ordinance and written recommendations submitted to the planning, commission for their consideration. The committee, if practicable, shall also inspect the premises prior to the issuance of a certificate of occupancy. If, due to seasonal variance, planting is not practical at the time required for issuance of a certificate of occupancy, the committee will inspect the premises at such time as the planting is actually done. If, in the opinion of the committee, the ordinance has not been complied with, the committee may make recommendations to the enforcement officer requesting that appropriate legal action be instituted.

The committee should consist of the following persons: a registered landscape architect or horticulture specialist, one member appointed from the general public, and the enforcement officer or his designee.

Enforcement - The requirements of this section will be administered by the planning commission and the landscape review committee and enforced by the enforcement officer. No occupancy permit shall be issued for a unit until the landscaping for that unit is completed and certified or bonded by the zoning enforcement officer. It shall be unlawful to occupy any premises unless the required landscaping has been installed or bonded in accordance with the final subdivision plat.

Variances - In such individual situations where, by reason of exceptional topographic, dimensional, shape, or other special site conditions, the enforcement of this section would create an undue hardship on the applicant, he/she may appeal to the Planning Commission for relief from specific provisions.

Location of Landscape Buffer Areas - The landscape buffers described in categories I-V shall apply to all common boundaries between different land uses. The landscape buffers described in categories VI-IX shall apply to the property line adjacent to a public right-of-way. Landscape buffers described in category X shall apply to all boundaries of the stated activities (Section 504.43).

Relationship to Yard Requirements - The landscape buffer areas set forth in this ordinance shall be included in the minimum yard requirements of the appropriate zone. If the buffer area is greater than the yard requirement, the yard requirement shall be extended to accommodate the buffer.

Inclusion of Subdivision Plat - Areas co be set aside for landscape buffer areas shall be shown on both the preliminary and final plats and on development plans (as applicable).

Buffer Area Conflicts - Where landscape buffers are required in the same location as utility easements, the two may be combined providing that the total width and screening requirements are met and it is not in violation of any required utility easements.

Provisions of Planting Materials and Barriers - Such trees, shrubs, ground covers, and barriers as required shall be provided by the owner or developer and considered as any other site improvement. The planning commission may

require that sufficient bond as may be determined adequate to cover the improvements may be required to be posted.

405 ZONING BOUNDARIES

405.1 REPLACEMENT OF OFFICIAL ZONING MAP

In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret due to the number of changes made, the City Council may by resolution adopt a new Official Zoning Map which shall supersede the prior map. The new map may correct drafting or other errors or omissions in the prior map, but no such correction shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof. The Official Zoning Hap shall be identified by the signature of the Mayor, attested by the City Clerk, and bear the seal of the City under the following words: "This is co certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Development Ordinance for Richmond."

405.2 INTERPRETATION OF BOUNDARIES

The following rules shall apply with respect co determining the location of zoning boundaries :

When uncertainty exists in the approximate location of a zoning district boundary, the boundary shall be construed as following the center line of streets, highways, alleys, streams, canals, lakes, and railroad lines. It will also be construed as following the city limits boundary, and platted lot lines. A boundary indicated as parallel to or extensions of features shall be so construed, with distances indicated on the map or determined by use of the map

scale. Where physical or cultural features existing on the ground are at variance with those shown on the map, or in other circumstances not covered above, the planning commission shall interpret the district boundaries. Zoning boundaries should not divide a single parcel of property in the same ownership into different zones. Where this was done prior to adoption of this ordinance, the planning commission may initiate a map amendment to extend the zone comprising the majority the property to include the entire parcel.

406 SIGNS

406.1 PURPOSE

The purpose of this section is to promote and protect the public health, welfare, and safety by regulating existing and proposed outdoor advertising, billboards, and outdoor signs of all types. It is further the intent of this section to protect property values, create a more attractive economic and business climate, enhance and protect the physical appearance of the community, and preserve the scenic and natural beauty of designated areas. Additionally, this section is designed to reduce sign or advertising distraction and obstructions that may contribute to traffic accidents, reduce hazards that may be caused by signs overhanging or projecting over public rights-of-way, and enhance community development.

406. 2 PERMITS REQUIRED

No sign (except as excluded in Section 406.3 as follows) may be constructed, erected, moved, enlarged, illuminated or substantially altered except in accordance with provisions of this section. Mere re-painting or changing the message of a

sign shall not, in and of itself, be considered a substantial revision.

406.3 SIGNS EXCLUDED FROM PERMITTING

The following signs are exempt from regulation under this section:

1. Signs not exceeding four square feet in area that are normally associated with residential use, such as used for property identification, signs related to private parking, trespassing, etc. Signs denoting the name and address of the occupants of the premises shall not exceed two square feet.

2. Signs erected by or on behalf of or pursuant to the authorization of a governmental body, including legal notices, informational signs, traffic, or related signs.

3. Official signs of a non-commercial nature erected by public utilities.

4. Flags, pennants, or insignia of any governmental or nonprofit organization when not displayed in connection with a commercial promotion or as an advertising device.

5. Integral decorative or architectural features of a building or works of art (not containing letters, trademarks, moving parts, or lights).

6. Church bulletin board or identification signs, that do not exceed one per abutting street and 15 square feet in area, and are not internally illuminated.

7. Signs painted on or otherwise permanently attached to currently licensed motor vehicles that are not primarily used as signs.

8. Signs proclaiming religious, political, or other noncommercial messages that do not exceed one per abutting street and 15 square feet in area, and are not internally illuminated.

9. Real estate signs indicating property for sale, rent or lease. Such signs may not exceed six square feet in residential zones, and 12 square feet in area in commercial/industrial zones, and shall be removed immediately after the transaction is completed.

10. Construction site identification signs. Not more than one sign is allowed per site, and it may not exceed 50 square feet. Such signs shall not be erected prior to issuance of a building permit-and shall be removed within 10 days after occupancy.

11. Displays, including lighting, erected in connection with the observance of holidays. Such signs shall be removed within 10 days following the holidays.

12. Signs erected in connection with elections or political campaigns. Such signs shall be removed within three days following the election or conclusion of the campaign. No such sign shall exceed 16 square feet in surface area.

13. Signs indicating a special event such as a grand opening, fair, carnival, circus, festival or similar event that is to take place on the lot where the sign is

located. Such signs shall not exceed 32 square feet. They may be erected no sooner than two weeks before the event and must be removed not later than three days after the event.

406.4 SIGN STANDARDS

Signs subject to permitting shall meet the following standards:

406.41 TYPES OF SIGNS

1. Wall or facade sign: A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure or sign surface, and that does not project more than 24 inches from the building or structure.

2. Freestanding sign: A sign that is attached to, erected on, or supported by some structure (such as a pole or frame) that is not an integral part of or attached to a building or other structure whose principal function is other than for support of a sign.

3. Internally illuminated sign: A sign where the source of illumination is inside the sign and light emanates through the message of the sign rather than being reflected off the surface of the sign from an external source.

4. Off-premise sign: A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction or other enterprise or activity that exists or is conducted, sold, offered, maintained, or provided at a location other

than the premises on which the sign is located. Billboards are off-premise signs.

5. On-premise sign: A sign that draws attention to or communicates information about a business, service, commodity, accommodation, attraction or other enterprise or activity that exists or is conducted, sold, offered, maintained, or provided on the premises where the sign is located.

6. Temporary sign: A sign that is used in connection with a circumstance, situation or event that is designed, intended, or expected to be completed within a reasonably short time (not in excess of 60 days).

406.42 NUMBER OF SIGNS

For the purpose of determining the number of signs, a sign shall be considered to be a display surface or display device containing elements organized, related, and composed to form [Foldout]

a unit. A two-sided or multi-sided sign shall be regarded as one sign.

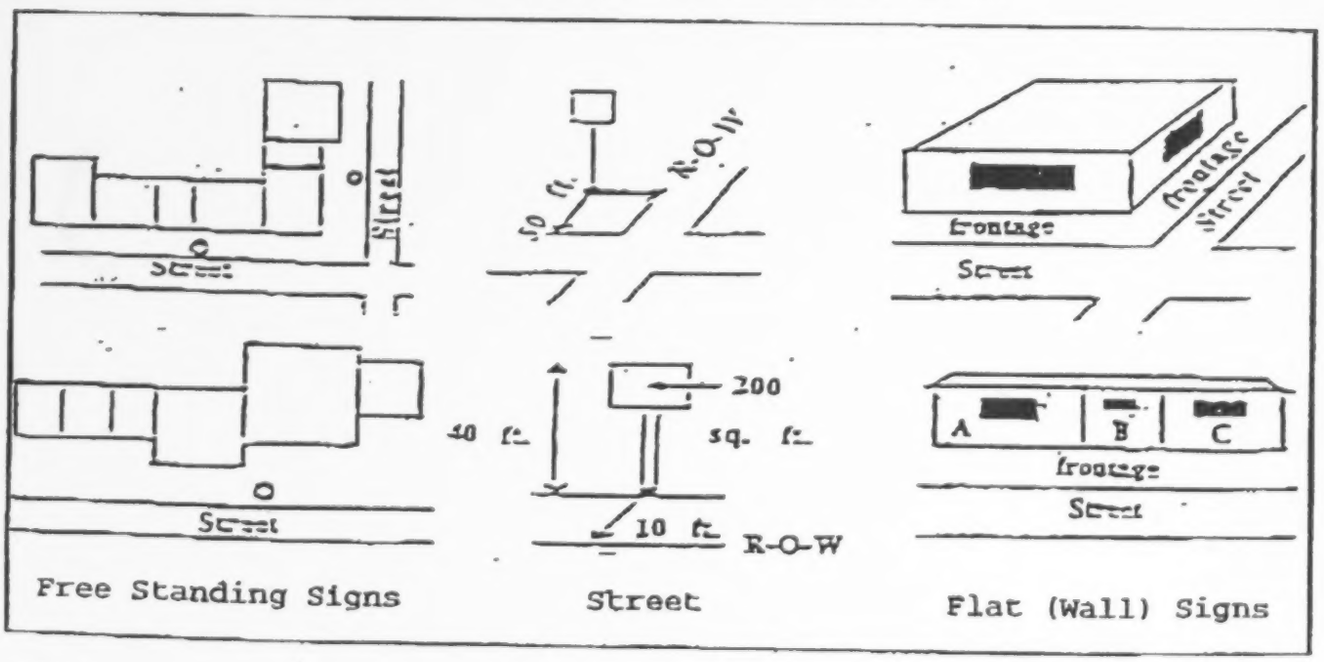
Property having more than one street frontage shall be allowed one freestanding sign per street frontage. A shopping center or other multiple business building shall be limited to one freestanding sign per street frontage. An out lot within a shopping center shall be allowed a separate freestanding sign.

Each individual business shall be allowed one wall sign per street frontage.

406.43 SIGN DIMENSIONS

In commercial and industrial zones, each business or industry shall be permitted one wall sign per street frontage. The dimensions of the wall sign shall not exceed 4 square feet of sign area for each linear foot of building space for the individual business or industry. Where two street frontages are involved, the total area of wall signs shall not exceed 500 square feet.

The maximum surface area of a freestanding sign shall be 200 square feet (300 square feet in a B-4 district). The maximum height of freestanding signs shall be 40 feet.



406.5 SETBACK REQUIREMENTS

A freestanding sign shall conform to the appropriate setback requirements of the zone district in which it is located. If there is no minimum yard requirement indicated, the minimum setback from

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the street pavement edge shall be 10 feet. At the intersection of Major collector or arterial streets, the minimum setback for signs will be 50 feet from the right-of-way line. No sign or advertising structure shall be erected or placed closer than 50 feet of a side or rear lot line in a residential district. Signs shall be placed in such a manner as to not cause excessive light or glare for adjacent property.

406.6 TEMPORARY SIGNS

All temporary signs not excluded in Section 406.3 shall require a permit. A permit is for a 60 day period (plus construction time if applicable).

No temporary sign announcing special, public, or institutional events, or erection of a building shall exceed fifty square feet in display area.

Mobile or portable signs are a special type of temporary sign and must meet the following requirements:

1. Mobile signs shall be permitted in commercial and industrial districts.

2. Mobile signs shall not extend, higher than eight feet above the surface on which they are located.

3. Mobile signs shall not be placed in such a way as to create a safety hazard or impede traffic flow. They shall not be placed any closer than 10 feet to the edge of the pavement, or within 50 feet of the R-O-W at intersections of highways or major arterial streets.

4. Each individual business or individual parcel of property shall be permitted only one mobile sign.

5. Mobile signs shall- meet all requirements of other sections of this ordinance and related codes as applicable.

6. Mobile signs may be allowed by permit for a period not to exceed 60 days.

406.7 GENERAL REQUIREMENTS

In addition to the requirements above, all permitted signs in the city shall adhere to the following regulations:

1. All wiring, fittings, and materials used in construction, connection, and operation of electrically illuminated signs shall be in accordance with the provisions of the National Electric Safety Code (most recent edition).

2. Illuminated signs shall emit light of a constant intensity waivers may be granted to signs that provide weather, time, civic announcements, and public information, and change copy electronically. The Planning Commission will determine the suitability of future sign technology and design not presently covered in this ordinance, in conformance with this ordinance.

3. No projecting sign shall be erected or maintained from the front or face of a building a distance of more than two feet. No sign shall be placed on the roof of any building so as to project beyond the front or face of the building.

4. No permanent sign or part thereof shall consist of banners, ribbons, streamers, spinners, or similar

moving devices. If allowed in conjunction with the observance of holidays, blinking lights shall not be placed in such a manner as to create a safety or traffic hazard.

5. No sign shall be installed, erected, or attached in any form, shape, or manner to a fire escape, or door so as to interfere with access.

6. Any sign that is found to be non-conforming with these regulations at the time of their adoption shall meet the requirements of section 302 (Non-Conformities) dealing with non-conforming uses and structures.

7. The only signs allowed in residential districts are those described in Section 406.3. One sign may be used to identify a home occupation, and shall not exceed four square feet in size.

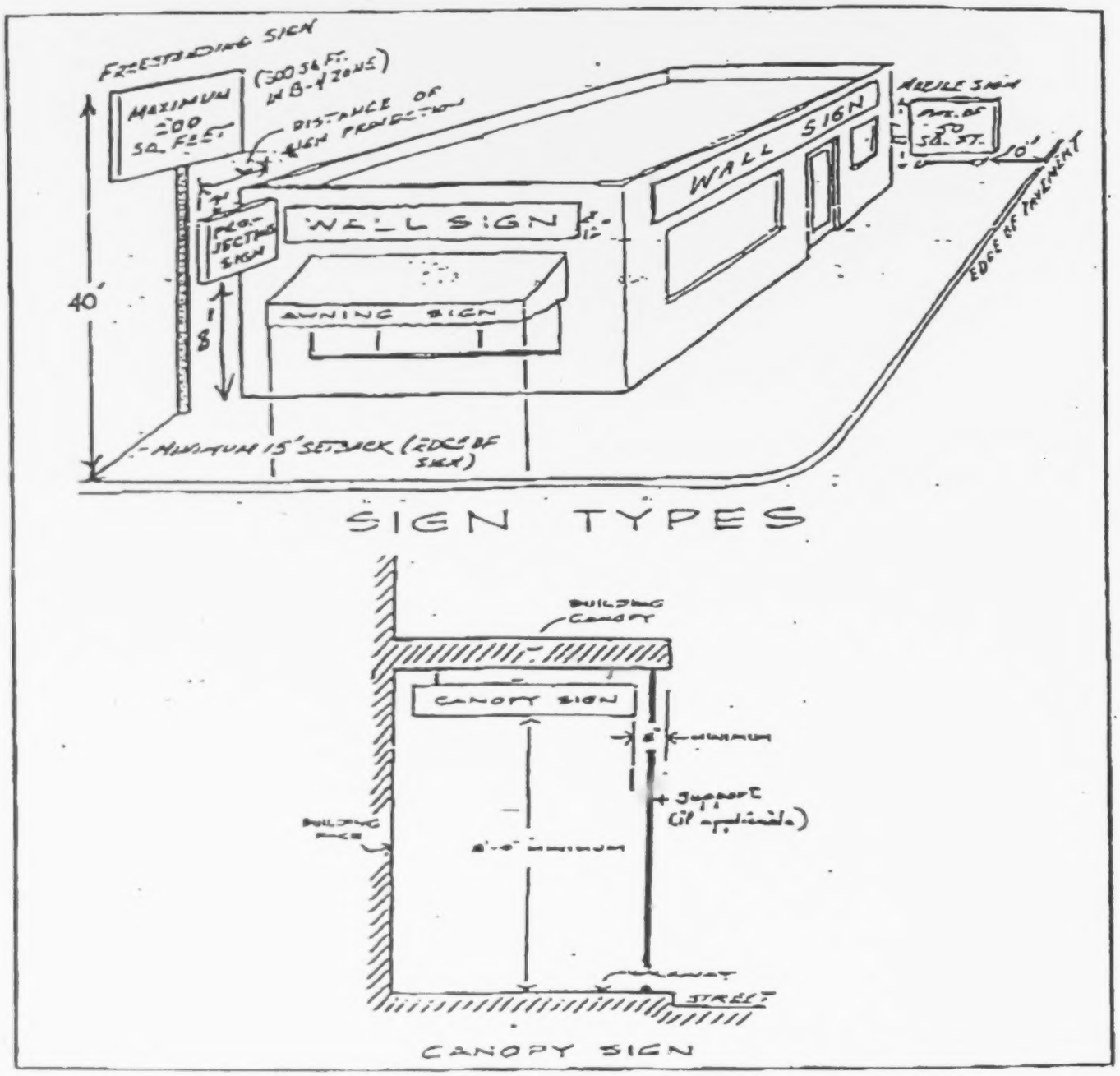
8. Off-premise signs are prohibited.

9. No sign shall be placed in any public right-of-way except public-owned signs such as traffic control signs and directional signs, signs directing and guiding traffic and parking on private property but bearing no advertising matter shall be allowed on any property.

10. Canopies shall be allowed in commercial areas, provided they are at least 8 feet above the sidewalk, and do not extend any closer than 8 inches to the pavement edge. If a support is used, it must be within 8 inches of the pavement edge.

11. Should any sign be or become unsafe or be in danger of falling, or be in need of re-painting or other repair, the owner thereof, or the person maintaining the sign, shall upon receipt of written notice from the Administrative Official proceed at once to put said sign in a safe and secure condition, or remove the sign. Signs [Foldouts]

which are non-conforming at the time of this ordinance shall be allowed to remain. However, no non-conforming sign shall be enlarged or expanded. Once a non-conforming sign has been removed, falls, or is destroyed, it shall be replaced only with a sign conforming to the requirements of this ordinance.

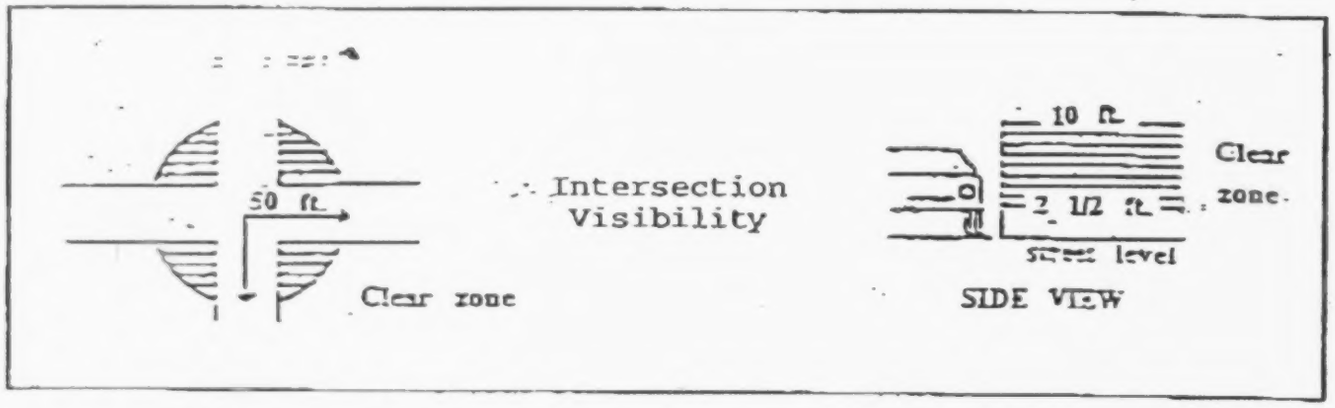


407 SUPPLEMENTARY REGULATIONS

General - The purpose of supplementary regulations is to set specific conditions for various uses, classification of uses, or areas where problems are frequently encountered.

407.1 RESIDENTIAL AREAS

Visibility at Intersections - On a corner lot, nothing shall be erected, placed, planted, or allowed to grow in such a manner as to materially impede vision in the area bounded by the street lines of such corner and a line joining points along said street lines fifty (50) feet from the center point of the intersection. Corner lots shall be graded to proper elevations in order to comply with the provision.



Fences/Walls/Hedges - Notwithstanding other provisions of this ordinance, fences, walls, and hedges may be permitted in any required yard or along the edge of a yard provided they not be permitted to impair traffic visibility.

Accessory Buildings - Accessory buildings shall be located in the rear or side yard of a principal structure and shall not be erected within ten (10) feet of any property line. No more than two (2) accessory structures shall be allowed per lot.

Structures to Have Access - Every building hereafter erected or moved shall be on a lot adjacent to a public street or with access to an approved private street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection, and required off-street parking.

Parking and Storage of Vehicles - No recreational equipment as defined below shall be used for living, sleeping, or housekeeping purposes when parked or stored on a residential lot or in any location not approved for such use. Such equipment includes boats and trailers, travel trailers, pickup campers, coaches, motorized dwellings, tent trailers, and boxes or cases used for transporting such equipment.

Solid Waste Management - Development plans shall include provisions for storage and disposal of solid waste. Containers for solid waste shall be of sufficient capacity. Containers will be placed in rear or side yards, and located in such a way as to be accessible by service vehicles. Containers will be separated from

the remainder of the developed area by a fence, wall, or vegetative screen.

All waste resulting from construction, demolition, or remodeling shall be promptly removed from the site and disposed of in accordance with law.

407.2 COMMERCIAL AREAS

Fences/Walls/Hedges- These regulations are the same as for residential areas.

Accessory Structures - Accessory structures shall be located in the rear yard of a principal structure and shall not be erected within five (5) feet of any property line.

Exceptions to Height Regulations - The height limitations contained in Section 402.2 do not apply to spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys, or other appurtenances usually required to be placed above the roof level, and not intended for human occupancy.

Structures to Have Access - These regulations are the same as retired in residential areas.

Loading Space Requirements and Dimensions - A loading space shall have minimum dimensions of not less than twelve (12) feet in width, fifty (50) feet in length, exclusive of driveways, aisles, and other circulation areas, and a height of clearance of not less than fifteen (15) feet. One off-street loading space shall be provided and maintained on the same loc for every separate occupancy requiring delivery of goods and having a modified gross floor area of up to five thousand (5,000) square feet. One loading space shall be provided for

each additional ten thousand (10,000) square feet or fraction thereof.

Solid Waste Management - Development plans shall include provisions for storage and disposal of solid waste. Containers for solid waste shall be of sufficient capacity. Containers will be placed in rear or side yards, and located in such a way as 5o be accessible by service vehicles. Containers will be separated from the remainder of the developed area by a fence, wall or vegetative screen.

All waste resulting from construction, demolition, or remodeling shall be promptly removed from the site and disposed of in accordance with law.

407.3 INDUSTRIAL AREAS

In addition to regulations specified above for commercial areas, industrial areas shall meet the following requirements:

Protection Standards- Any manufacturer locating in an industrial district shall be required to submit information regarding storage, use, and disposal of any materials or substances which might be detrimental to public health. safety, and welfare. Agencies to be consulted include the fire department, county health department, and city utilities (as applicable). No materials or wastes shall be stored in such a way as to be transferred off the site by natural forces or causes. No fire, explosion, or related safety hazard shall be created or maintained on the site that could create a safety or health hazard beyond the site. There shall not be emitted from the site any excessive noise (beyond average noise levels in the area), nor shall any objectionable heat, glare, vibration, dust, smoke, dirt, vapors, gases, or toxic/noxious matter be emitted from the site.

ARTICLE VII
DEFINITIONS

Unless the context otherwise requires, the following, definitions shall be used in the interpretation and construction of the ordinance, words used in the present tense shall include the future; the word "building" shall include the word "structure"; the word "lot" includes the words "plot" or parcel"; the word "used" shall include "arranged, designed, constructed, altered, converted, rented, leased" or intended to be "used"; the word "shall" is mandatory, "may" is permissive, and "should" is preferred.

1. Accessory Use or Structure: A use or structure subordinate to the principal use of a building or to the principal use of land and which is located on the same lot, serving a purpose customarily incidental to the use of the principal building or land use.

2. Administrative Official: Any department, employee, or advisory, elected or appointed body which is authorized to administer any provision of the zoning regulation, subdivision regulations, and if delegated, any provision of any housing or building regulation or any other land use control regulation.

3. Agricultural Use: The use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timbers, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including

residential building development for sale or lease to the public.

4. Alley or Lane: A public or "private way not more than thirty (30) feet wide affording only secondary means of access to abutting property.

5. Alterations, Structural: Any change in the supporting members of a building such as -bearing walls, columns, beams, or girders.

6. As-Built Plans: Engineering plans of public facilities, particularly water and sewage systems, prepared after construction to show the exact location and dimensions of the systems as they have actually been installed.

7. Automotive Repair, Major: Repair of motor vehicles or trailers, including rebuilding or reconditioning of engines and/or transmissions; collision services including body, frame, or fender straightening or repair: overall painting or paint shop; vehicle steam cleaning.

8. Automotive Repair, Minor: Incidental minor repairs, upholstering, replacing of parts and motor service to passenger cars and trucks not exceeding one and one-half (1 and1/2) tons capacity, but not including any operation named under "Automotive Repair, Major."

9. Automotive Service Station: A place where gasoline, kerosene or any other motor fuel or lubricating oil or grease or parts and accessories for operating motor vehicles is offered for sale to the public and deliveries

are made directly into motor vehicles, including greasing and oiling on the premises.

10. Automotive Wrecking: The dismantling or disassembling of used motor vehicles, or the storage, sale, or dumping of dismantled, partially dismantled, obsolete or wrecked vehicles or their parts.

11. Basement: A story of a structure whose floor line is more than five (5) feet below grade.

12. Block: In describing the boundaries of a district, the word block refers to the legal description. In all other cases, the word block refers to the property abutting one side of a street and a railroad right-of-way or waterway.

13. Board of Adjustment: A body of five citizens appointed by the mayor with the approval of the city Commission, and having the following functions: I) Acting on conditional use permits and dimensional variances and 2) reviewing and deciding upon appeals regarding errors in interpretation of the zoning ordinance.

14. Boarding or Lodging House: A dwelling or part thereof occupied by a single housekeeping unit where meals and lodging are provided for four (4) or more persons for compensation by previous arrangement, but not transients.

15. Buildable Lot Area: That part of the lot not included within the open areas required by this Ordinance.

16. Building: Any structure having a roof supported by columns or walls, used or intended to be used for the support, shelter, protection or enclosure of persons, animals, or property.

17. Building, Height of: The vertical distance from the average contact ground level at the front wall of the building to the highest point of the coping of a flat roof or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, or gambrel roofs.

18. Building Permits: A document issued by the Administrative official authorizing the use of lots, structures, uses of land and structures.

19. Building Setback Line: The line beyond which no building or part thereof shall project, except as otherwise provided by this Ordinance.

20. Cemetery: Land used or intended to be used for the burial of the animal or human dead and dedicated for cemetery purposes, including columbarium, crematories, mausoleums, and mortuaries, if operated in connection with and within the boundaries of such cemetery.

21. Chairperson: The elected chairperson of the Planning Commission or, in his/her absence, the vice chairperson or other delegated representative.

22. Commission: The Planning Commission administering these regulations.

23. Comprehensive Plan: A plan or any portion thereof, adopted by the Planning Commission and/or the City Commission of Richmond, showing the general location and extent of present and proposed physical facilities, including housing, indus trial and commercial uses, maj or streets, parks, schools, and other community facilities.

24. Conditional Use: A use which is essential to or would promote the public health, safety, or welfare in one or more zones, but which would impair the integrity and character of the zone in which it is located, or in adjoining zones, unless restrictions on location, size, extent and character of performance are imposed in addition to those imposed in the zoning regulation.

25. Conditional Use Permit: Legal authorization to undertake a conditional use, issued by the Administrative official pursuant to authorization by the board of adjustment, consisting of two (2) parts:

    a. A statement of the factual determination by the board of adjustment which justifies the issuance of the permit; and

    b. A statement of the specific conditions which must be met in order for the use to be permitted.

26. County: Refers to the territory of Madison County.

27. Court: An open unoccupied and unobstructed space, other than yard, on the same lot with a building or group of buildings.

28. Day-Care Center: A facility for child care that meets state requirements.

29. Density: A unit of measurement; the number of dwelling units per acre of land.

    a. Gross Density - the number of dwelling units per acre of land to be developed.

    b. Net Density - the number of dwelling units per acre of land devoted to residential uses.

30. Developer: Any individual, firm, association, corporation, governmental agency, or any other legal entity commencing proceedings under these regulations, to carry out the development of land as defined herein, for himself or for another.

31. Development Plan: Development plan means written and graphic material for provision of a development, including any or all of the following: location and bulk of buildings and other structures, intensity of use, density of development, streets, ways, parking facilities, signs, drainage of surface water, access points, a plan for screening or buffering, utilities, existing manmade and natural conditions, and all other conditions agreed to by the applicant.

32. Display Sign: A structure that is arranged, intended, designed, or used as an advertisement, announcement or direction, including a sign, billboard, or advertising device of any kind.

33. Driveway: An improved surface connecting a garage or parking area with the street.

34. Dwelling: A building or structure designed or used exclusively as the residence or sleeping place of one or more persons, but not including a tent, cabin, trailer or mobile home, camper, boarding or rooming house, hotel or motel.

35. Dwelling, Loft: A single-family or multi-family dwelling unit that is allowed above a commercial use in business districts as provided in this ordinance.

36. Dwelling, Multi-Family: A building or portion thereof designed or used exclusively as the residence of three (3) or more families or housekeeping units living independently of each other.

37. Dwelling, Single-Family: A detached building occupied exclusively for residential purposes by one (1) family housekeeping unit.

38. Dwelling, Two-Family: A detached residential building containing two (2) dwelling units designed for two (2) families or housekeeping units living independently of each other. (Duplex).

39. Dwelling Unit: One (1) room or a suite of two (2) or more rooms, designed for or used by one (I) family for living and sleeping purposes and having only one (1) kitchen or kitchenette.

40. Easement: Authorization by a property owner for the use by others, of any designated part of his property, for a specified purpose and time as described in the conveyance of land by such easement.

41. Erosion Control Committee: A committee established by the Madison County soil Conservation District to review and make recommendations on soil erosion control plans.

42. Essential Services: The erection, construction, alteration or maintenance, by public utilities or municipal or other governmental agencies, of underground or overhead gas, electrical, steam or water transmission or distribution systems, collection, communication, supply or disposal systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarm, boxes, traffic signals, hydrants, and other similar equipment and furnishing of adequate service by such public health or safety or general welfare, but not including buildings.

43. Family: A person living alone, or two (2) or more persons related by blood, marriage or adoption, or not more than five (5) unrelated persons living together as a single housekeeping unit, in a dwelling unit, as distinguished from a group occupying a boarding house, lodging house, motel, or hotel, fraternity or sorority house.

44. Frontage: Frontage shall be that boundary of a lot which is along an existing or dedicated public street, or where no public street exists, is along a public way where a lot abuts more than one street, the Board shall determine the frontage for purposes of this ordinance.

45. Garage, Private: A detached accessory building or a portion of the principal building used by the occupants of the premises for the shelter or storage of vehicles

owned or operated by the occupants of the principal building.

46. Grade: The inclination from the horizontal of a road unimproved land, etc, and is expressed by stating the vertical rise or fall as a percent of the horizontal distance.

47. Home Occupation: Professional offices, workshops, studios, and personal services maintained or conducted within a dwelling. Neither the selling of any merchandise nor processing ~~of any~~ product shall qualify as a home occupation. Home Occupation includes only those which meet the following: (a) Home occupations shall be incidental to the principal residential use and shall not occupy more than twenty-five percent (25%) of the floor area of the dwelling unit; (b) Home occupations shall result in no exterior evidence, excepting a permitted sign, that the dwelling is used for a non-residential use; (c) Home occupations shall not generate any atmospheric pollution, light flashes, glare, odors, noise, vibration, or truck or other heavy traffic; (d) No more than one (1) person not a member of the occupant family may be employed in a home occupation.

48. Hospital or Sanitarium: An establishment which provides accommodations, facilities, and services over a continuous period of twenty-four (24) hours or more for observations, diagnosis and care, for two (2) or more individuals suffering from illness, injury, deformity or abnormality, or from any condition requiring obstetrical, medical, or surgical services.

49. Hotel or Motel: A building in which lodging or boarding and lodging are provided and offered to the public for compensation.

50. Improvements: Physical changes made to raw land, and structures placed on or under the land surface, in order to make the land more usable for man's activities. Typical improvements in these regulations would be grading, cutting and filling, street pavement, curbs, gutters, drainage ditches, storm and sanitary sewers. Utility lines of all types, street name signs, property number signs, trees, etc.

51. Industrial Park: An industrial park is a suitable tract of land for industrial use, which has been preplanned and is regulated and administered by a single body or agency.

52. Junkyard: A place where junk, waste, discarded or salvaged materials are bought sold, exchanged, stored, packed, disassembled or handles, including auto wrecking yards, house wrecking yards, used lumber yards and places or yards for storage of salvage house wrecking and structural steel materials and equipment, but not including such uses when conducted entirely within a completely enclosed building, and not including pawn shops and establishments for the sale, purchase or storage of used furniture and household equipment, used cars in operable condition, used or salvaged machinery in operable condition, or the processing of used, discarded or salvaged materials as a minor part of manufacturing operations.

53. Legislative Body: The chief body of a city or a county with legislative power.

54. Loading Space: An off-street space or berth on the same lot with a building or contiguous to a group of buildings, for the temporary parking of a commercial vehicle while loading or unloading merchandise or materials, and which abuts upon a street, alley, or other appropriate means of access.

55. Lot: A parcel of land whose boundaries have been established by some legal instrument, such as a recorded deed or a recorded map, and which is recognized as a separate legal entity for purposes of transfer of title. A lot in the city shall meet all of the appropriate zoning requirements. All lots shall have minimum frontage on a public street or approved private streets as indicated in this ordinance.

56. Lot Area: The amount of surface land contained within the property lines of a lot, including the land within easements on the lot, but excluding any land within the street right-of-way or public open space.

57. Lot, Corner: A corner lot is defined as a lot located at the intersection of two or more streets. A lot abutting on a curved street or streets shall be considered a corner lot if straight lines drawn from the foremost points of the side lot lines to the foremost point of the lot meet at an interior angle of less than one hundred thirty-five (135) degrees.

58. Lot Coverage: The ratio of enclosed ground floor area of all buildings on a lot to the horizontally projected area of the lot, expressed as a percentage.

59. Lot Depth: The average horizontal distance between the front and rear property lines of a lot.

60. Lot Frontage: The front of a lot is that portion nearest to the street. For the purpose of determining yard requirement. For corner and through lots, all sides of a lob adjacent to a street shall be considered frontage.

61. Lot Measurements: A lot shall be measured as follows (Figure 2):

    a. Depth of a lot shall be considered to be the distance between the mid-points of straight lines connecting the foremost points of the side lot lines in front and the rearmost points of the side lot lines in the rear.

    b. Width of a lot shall be considered to be the distance between straight lines connecting front and rear lot lines at each side of the lot, measured at the building setback line.

62. Lot, Minimum Area of: The area of a lot is computed exclusive of any portion of the right-of-way of any public or private street.

63. Not-of-Record: A lot which is part of a subdivision recorded in the office of the County Clerk, or a lot or parcel described by metes and bounds, the description of which has also been recorded.

64. Lot, Through or Double Frontage: A lot of which the opposite ends abut on streets.

65. Lot Width: The distance between the two side property lines of a lot measured along the building setback line.

66. Major Street Plan: That portion of the comprehensive plan pertaining to transportation and existing and proposed streets.

67. Manufacturing, Heavy: Manufacturing, processing, assembling, storing, testing, and similar industrial uses which are generally major operations and extensive in character; require large sites, open storage and service areas, extensive services and facilities, and ready access to regional transportation.

68. Manufacturing, Light: Manufacturing or other industrial uses which are usually controlled operations, relatively clean, quiet, and free of objectionable or hazardous elements such as smoke, noise, odor, or dust; operation and storing within enclosed structures; and generating little industrial traffic and no nuisances.

69. Minor Subdivision Plat: See Section 503.1 of these Regulations.

70. Mobile Home: A dwelling unit that: (a) is not constructed in accordance with standards set forth in the [state or local building code applicable to site-built homes], (b) is composed of one or more components, each of which was substantially assembled in a manufacturing plant and designed to be transported no the home site on its own chassis, and (c) exceeds forty (40) feet in length and eight (8) feet in width.

71. Mobile Home Park: Any site, tract of land under single ownership, upon which two or more mobile homes used for habitation are parked, either free of charge or for revenue purposes, including any

roadway, building, structure, vehicle, or enclosure used or intended for use as a part of the facilities of such park.

72. Modular Home: A dwelling unit constructed in accordance with the standards set forth in the [state or local building code applicable to site-built homes] and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation. Among other possibilities, a modular home may consist of two sections transported, to the site in manner similar to a mobile home (except that-the mobile home meets the [state or local building code applicable to site-built homes]), or a series of panels or room sections transported on a truck and erected or joined together on the site.

73. Nonconforming Use or Structure: An activity or a building, sign, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

74. Noxious or Toxic Matter: Any matter such as dust, dirt, odors, vapors, gases, fumes, smoke, or radiation, which is inherently harmful and likely to destroy life and impair health, or is capable of causing injury to" the well being of persons, or damage to property.

75. Nursery, Nursing Home: A home or facility for the care and treatment of babies, children, pensioners, or elderly people.

76. Official Public Properties Map or Official Map: A map prepared in accordance with KES 100-293 through 100-317 and adopted by the Planning Commission and the City Commission body, showing the location and extent of the existing and proposed public streets, including right-of-way, water courses, parks and playgrounds, public schools and building sites, and other public facility needs.

77. Open Space: An area open to the sky which may be on the same lot with a building. The area may include, along with the natural environmental features, swimming pools, tennis courts, any other recreational facilities that the Planning Commission deems permissive. Streets, structures for habitation, and the like shall not be included.

78. Owner: Any individual, firm, association, corporation, governmental agency, or any other legal entity whose name last appears on the tax roles as the owner of the land proposed to be subdivided.

79. Parking Spaces, Off-Street: For the purpose of this Ordinance, an off-street parking space shall consist of an area adequate for parking an automobile with room for opening doors on both sides, together with properly related access to a public street or alley and maneuvering room, but shall be located totally outside of any street or alley right-of-way.

80. Planned Unit Development: An area of land in which a variety of housing types and/or related commercial facilities are accommodated in a pre-planned environment under more flexible standards, such as lot sizes and setbacks, than those restrictions that

would normally apply under these regulations. The procedure for approval of such development contains requirements in addition to those of the standard subdivision, such as building design principles and landscaping plans.

81. Planning Commission: The legally constituted body of seven members appointed by the Mayor of Richmond with the approval of the city commission and the Judge Executive (for county representative) with the approval of the Fiscal Court, to carry out the planning and zoning responsibilities as described in chapter 100, KRS.

82. Plat: The map of a subdivision.

    a. Sketch Plat: A preliminary sketch indicating the subdivision's general objectives and desires in regard to the future development of his land, presented to the Planning commission for its informal consideration.

    b. Preliminary Plat: The drawings and supplementary material indicating the proposed layout of the subdivision to be submitted to the Planning Commission for its consideration.

    c. Final Subdivision Plat: The final map, drawing, or chart upon which the subdivider's plan of subdivision is presented to the Planning Commission for approval, and which, if approved, will be submitted to the County Clerk for recording.

d. Principal Building: The building in which the primary activity on a certain lot is carried out.

e. Principal Use: A use which is permitted outright in a district for which a building permit may be issued by the Building Official in accordance with the provisions of this Ordinance.

83. Public Facility: Any use of land whether publicly or privately owned for transportation, utilities, or communications, or for the benefit of the general public, including, but not limited to, libraries, streets, schools, fire or police stations, county buildings, municipal buildings, recreational centers including parks, and cemeteries.

84. Public Use: Public parks, schools, and administrative, and cultural buildings, and structures, not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and public service facilities.

85. Quasipublic Use: Churches, Sunday schools, parochial schools; colleges, hospitals, and other facilities of an educational, religious, charitable, philanthropic, or non-profit nature.

86. Recreational Facilities: Public or private facilities that may be classified as either "extensive" or "intensive" depending upon the scope of services offered and the extent of use. Extensive facilities generally require and utilize considerable areas of land and include, but need not be limited to, hunting, fishing, and riding clubs and parks. Intensive facilities generally require less land (used more intensively) and include, but need

not be limited to, miniature golf courses, amusement parks, stadiums, and bowling alleys.

87. Right-of-Way: A strip of land taken or dedicated for use as a public way. In addition to the roadway, it normally incorporates the curbs, lawn strips, sidewalks, lighting, and drainage facilities, and may include special features (required by the topography or treatment) such as grade separation, landscaped areas, viaducts, and bridges.

88. Seat: For the purposes of determining the number of off street parking spaces for certain uses, the number of seats is the number of seating units installed or indicated, or each twenty-four (24) linear inches of benches, pews, or space for loose chairs.

89. That portion of the road right-of-way outside the roadway, which is improved for the use of pedestrian traffic.

90. Sign: Any device designated to inform or attract the attention of persons not on the premises on which the sign is located.

91. Street: A way for vehicular traffic, however designated and regardless of size or ownership, but excluding private driveways serving only one parcel of land.

92. Street Classification: See Section 504.61 of these Regulations.

93. Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having a fixed location on the ground.

94. Subdivider: Any individual, firm, association, corporation, governmental agency, or any other legal entity commencing proceedings under these regulations, to create a subdivision of land as defined herein for himself or for another.

95. Subdivision: The division of a parcel of land into two (2) or more lots or parcels for the purpose, whether immediate or future, of sale, lease, or building development, or if a new street is involved, any division of a parcel of land, provided that a division of land for agricultural use and not involving a new street should not be deemed a subdivision. The term includes resubdivision and when appropriate to the context, shall relate to the process of subdivision or, to the land subdivided; any division or redivision of land occurring within twelve (12) months following a division of the same land shall be deemed a subdivision within the meaning of this section. Agricultural use means the use of a tract of at least five (5) contiguous acres for the production of agricultural or horticultural crops, including but not limited to, livestock, livestock products, poultry, poultry products, grain, hay, pastures, soybeans, tobacco, timbers, orchard fruits, vegetables, flowers or ornamental plants, including provision for dwellings for persons and their families who are engaged in the above agricultural use on the tract, but not including residential building development for sale or lease to the public.

96. Technical Advisory Committee: A committee comprised of representatives from local governmental agencies and public utilities, responsible for reviewing the technical aspects of subdivision plans.

97. Tourist Homes: Establishments which provide lodging and a meal (or meals) for tourists for a prearranged fee. A Bed and Breakfast Homestay is a residence limited to a maximum of three (3) guest rooms. A Breakfast Inn is a commercial establishment with an architectural style of an historic or regional nature and is limited to a maximum of twenty (20) guest rooms. Bed and Breakfast establishments shall not have structural changes made except those required for general maintenance.

98. Townhouse: A single family dwelling unit containing one or more stories, attached on one or both sides to another single family dwelling unit and usually arranged in rows of three (3) or more units.

99. Unit: A portion of a subdivision selected for development as one (1) of a series of stages.

100. Use: The specific purposes for which land or a building is designated, arranged, intended, or for which it is or may be occupied or maintained.

101. Variance: A departure from dimensional terms of the zoning regulation pertaining to the height, width, or location of structures, and the size of yards and open spaces where such departure meets the requirements of KRS 100.241 to 100.247.

102. Veterinary Animal Hospital or Clinic: A place used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals, and those who are in need of medical or surgical attention, and may include overnight accommodations on the premises for the treatment, observation and/or recuperation.

103. Walls and Fences: Walls shall be constructed of natural stone, brick, or other weatherproof materials arranged in a linear, serpentine, or other alignment; while fences shall be constructed of wood or other weatherproof, durable materials generally used in the exterior construction of buildings. chain link fencing may be used to meet the requirements of this Article. Chain link fencing may be installed in the required landscape area only if it is in addition to the required continuous planting, hedge, fence, wall, or earth mound. In industrial zones, there shall be no height limitation on walls or fences; in all other zones, however, there shall be a six (6) foot height restriction for walls or fences in front yards and side street side yards, and an eight (8) foot height restriction in side and rear yards. All walls or fences shall have a minimum opacity of eighty percent (80%). walls and fences allowed to meet the requirements of this Article shall not be used for the erection or display of any sign or other advertising device.

104. Yard: A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from three (3) feet above the general ground level of the graded lot upward:

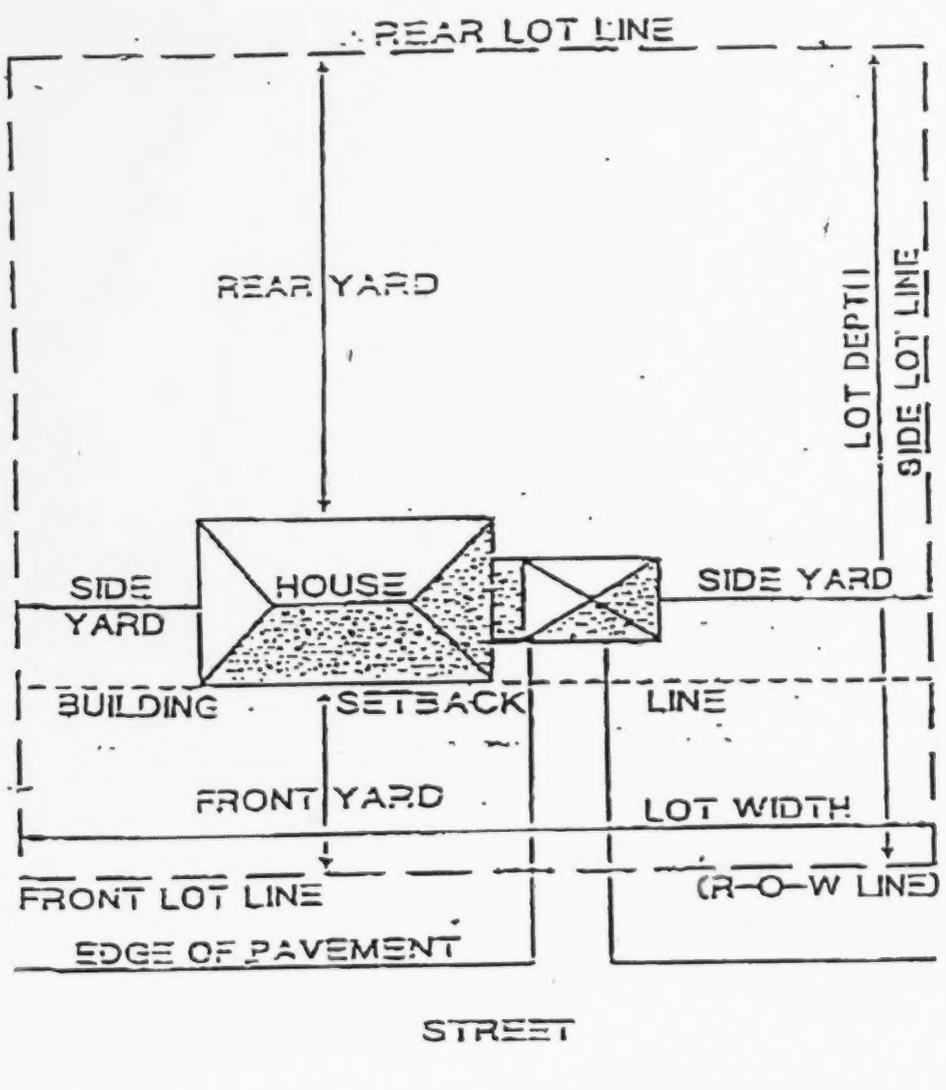
provided, accessories, ornaments, and furniture may be permitted in any yard, subject to height limitations and requirements limiting obstruction of visibility. In the case of irregularly shaped lots, the Administrative official shall be responsible for interpretation of the type yard. Refer to Figure 2 for types of yards.

[Foldout]

a. Yard, Front: A yard extending between side lot lines across the front of a lot and from the front lot line to the front of the principal building.

b. Yard, Rear: A yard extending between side lot lines across the rear of a lot and from the rear lot line to the rear of the principal building.

c. Yard, Side: A yard extending from the principal building to the side lot line on both sides of the principal building between the lines establishing the front and rear yards.



Lot and Yard Terms

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